

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



74-1041

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\_\_\_\_\_  
No. 74-1041  
\_\_\_\_\_  
B

MARIA DIAZ FARO

Plaintiff-Appellant,

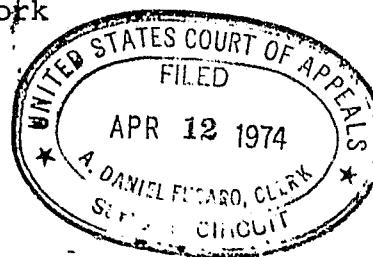
-against-

NEW YORK UNIVERSITY

Defendant-Appellee

On Appeal from the United States District Court  
for the Southern District of New York

JOINT APPENDIX



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Of Counsel: Katherine B. Desai

Attorney for Defendant-Appellee

**PAGINATION AS IN ORIGINAL COPY**

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CIVIL DOCKET  
UNITED STATES DISTRICT COURT

73 CV. 3769

Jury demand date:

No. 106 Rev.

JUDGE RUFFY

TITLE OF CASE

ATTORNEYS

MARIA DIAZ FARO

For plaintiff:

PELAMY, BLANK GOODMAN KELLY ROSS & STANLEY  
36 West 44th Street, N.Y.C. 0036 869-0020

VS.

NEW YORK UNIVERSITY

For defendant:

WILLIAM C. FORTH (SUITE 1-A)  
1 Washington Square Village, N.Y.C. *Jerin*  
~~202-598-2691~~

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed X	Clerk	1/3/73	Brinkley Blk 15	15	
		2/4/73	4 ST		15
mailed	Marshal	1/4/73	15		
Action: PLAITS. ACT. 1964	Docket fee				
	Witness fees				
arose at:	Depositions				
CERTIFIED COPY OF DOCKET ENTRIES					

DATE	PROCEEDINGS	Date of Judgment
30-73	Filed Complaint. Issued Summons.	
31-73	Filed pltff's affidavit in support of motion for a temporary restraining order	
31-73	Filed pltff's memorandum of law in support of preliminary injunction	
12-73	Before Duffy, J. Hearing begun and cont'd on motion for prelim. injunction on 9-12-73. Adjourned to 9-17-73 at 2:15 P.M.	
17-73	Before Duffy, J. Hearing cont'd-adjourned to 9-20-73.	
20-73	Before Duffy, J. Hearing cont'd and concluded. Post hearing briefs to be submitted.	
25-73	Filed ANSWER OF DEF'T to the Complaint. WOIT	
28-73	Filed summons and entered marshal's return: served Barbara Collins on 9-13-73	
15-73	Filed def't's memorandum in opposition to pltff's motion for a temporary restraining order and a preliminary injunction.	
9-73	Filed opinion # 997- the pltff. has failed to show either irreparable harm or the likelihood of success on the merits and, therefore, no injunction will issue. Motion denied. So ordered- D. FY, c. mailed notices.	
6-73	Filed pltff's notice of appeal from order entered 11-9-73. Mailed copy to: William C. Porth. Entered on docket 12-6-73.	
76-73	Filed pltff-appellant's designation of exhibits for record-on-appeal.	
8-74	Filed pltff's order to show cause for preliminary injunction ret. Sept 5-73. Wyatt, J.	
8-74	Filed affdvt of Joseph Goodgold in opposition to motion.	
8-74	Filed affdvt in opposition to motion for a temporary restraining order & prelim. injunction.	
8-74	Filed supplemental memorandum of law in support of motion.	
8-74	Filed transcript of record on proceedings of Sept 12-17-20-1973.	
31-73	Filed affdvt. of service in person.	

CERTIFIED COPY OF DOCKET ENTRIES

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
MARIA DIAZ FARO, :  
Plaintiff, :  
-against- : Index No. 73 Civ. 3769  
NEW YORK UNIVERSITY, : (K.T.D.)  
Defendant. : COMPLAINT  
----- x

I

JURISDICTION

This action is brought pursuant to §§703(a) and 706(f)(1), Title VII of the 1964 Civil Rights Act, §42 U.S.C. 2000e et seq., as amended by Public Law 92-261, 86 Stat. 103 (March 24, 1972) (hereinafter "Title VII"). Jurisdiction is conferred by §706(f)(3) of Title VII.

II

PARTIES

(a) Plaintiff, Dr. Maria Diaz Faro, is a woman scientist and teacher, employed at the New York University School of Medicine, with a Ph.D. degree in anatomy.

(b) Defendant, New York University, is an employer within the meaning of Title VII as amended.

### III

#### VENUE

The discriminatory employment practices alleged below are alleged to have been committed in this judicial district.

### IV

#### DISCRIMINATORY PRACTICES

(a) On August 24, 1973, the plaintiff filed class action charges against New York University alleging that the University, and particularly its Medical School, discriminates against women teachers on the basis of sex in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., as amended.

(b) Plaintiff alleges that she has been discriminatorily denied promotion and tenure on the Medical School faculty. Within the past two years, on at least two occasions, jobs have fallen vacant in the Medical School for which plaintiff was qualified and for which she was recommended. The Medical School failed to consider her on either occasion. In 1972 the job was given to a man; and at present the defendant is again seeking a man to fill the position, which became vacant a second time earlier this year. These acts of defendant are in violation of Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., as amended.

(c) Plaintiff alleges further that she has been discriminatorily denied job opportunities which pay the same salary the defendant pays male teachers to do the same

work. In late spring 1972, Medical School officials offered plaintiff an appointment to teach gross anatomy, a course she was already teaching, at a salary of \$4,000 a year. Male faculty members who teach anatomy are paid a full faculty salary of \$16,000 per year. Earlier in the year the defendant had hired a man to teach the very course plaintiff was then teaching, at a salary of \$23,000. These acts violated Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., as amended.

(d) Plaintiff alleges that she will be demoted on August 31, 1973, from a full-time to a part-time faculty position, solely because she is a woman. Subsequently, on December 31, 1973, plaintiff will be dismissed from the defendant's staff altogether, also because she is a woman. The defendant seeks to take these actions against plaintiff because it does not wish to give her promotion or tenure. Under its own rules it must therefore dismiss her from the university staff. The defendant's refusal to consider plaintiff for promotion or tenure is based solely on the fact that she is a woman. These acts also violate Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., as amended.

(e) On August 29, 1973, the defendant reiterated its intention to demote plaintiff on August 31, 1973. Therefore, prompt temporary and preliminary judicial relief is now necessary to prevent plaintiff from being both dismissed and demoted.

RELIEF

WHEREFORE, the plaintiff requests this Court, in accordance with Rule 65, Federal Rules of Civil Procedure:

1. To issue a temporary restraining order and preliminary injunction restraining the defendant, its agents, servants, employees and all persons in active concert or participation with them from demoting Dr. Faro to a part-time faculty position on August 31, 1973; and from terminating her employment altogether on December 31, 1973.

2. To enjoin and order defendant, its agents, servants, employees and all persons in active concert or participation with them, from changing the employment status of Dr. Faro in any way, pending governmental investigation of the charges and efforts by both parties to settle this matter through negotiation; and from otherwise taking any adverse action against Dr. Faro with respect to her employment unless prior notice is given to plaintiff, her attorneys and this Court.

3. To order such further relief as this Court deems proper and just to carry out the purposes of Title VII, including reimbursement of plaintiff's costs and attorneys' fees.

Dated: New York, New York  
August 30, 1973

Respectfully submitted,

By: Diane Serafin Blank  
Diane Serafin Blank

for  
BELLAMY BLANK GOODMAN KELLY ROSS  
& STANLEY  
Attorneys for Plaintiff  
36 West 44th Street  
New York, New York 10036  
(212) 869-0020

# NEW YORK UNIVERSITY MEDICAL CENTER

Institute of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

January 29, 1973

Howard A. Rusk, M.D.  
Professor and Chairman  
Department of Rehabilitation Medicine  
School of Medicine  
400 East 34th Street  
New York, New York 10016

Dear Doctor Rusk:

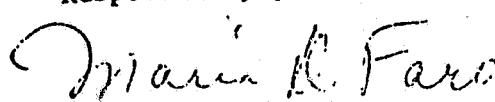
I wish to acknowledge receipt of your letter dated July 29, 1971 regarding the change in my academic rank and tenure status effective September 1, 1972, a copy is attached. I had not replied to you because negotiations were pending with the Department of Anatomy for a joint appointment. I was just informed by Doctor Goodgold's office that Doctor Potter has expressed an interest in my remaining in the Department of Rehabilitation Medicine.

It is my understanding that the position of Research Associate Professor (part-time) does not imply the opportunity of attaining tenure and does not carry equal status with the title I now hold. I would very much like to maintain a position which will have the potential for tenure. It is my belief that my performance of the last eight years as a full-time faculty member in the Department of Rehabilitation Medicine qualifies me for this consideration. The past eight years of my career have been deeply rewarding and I would like to continue as a member of your department in my current status.

I realize the tremendous financial obligations that my work entails. I will endeavor to do everything in my power to meet them as I have done in the past. Let me express my appreciation for all the support that you have given me in my work.

I hope to receive a favorable reply from you.

Respectfully yours,

  
Maria D. Faro, Ph.D.

Enc.

[EXHIBIT H]



# NEW YORK UNIVERSITY MEDICAL CENTER

Institute of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

May 4, 1973

Dr. Howard A. Rusk  
Chairman Dept. of  
Rehabilitation Medicine  
New York University  
School of Medicine  
New York, New York, 10016

Dear Doctor Rusk:

On April 25, 1973, I was informed by Miss Arlene Weissman, Benefits Representative of the Personnel Department, that recently my status had been changed to Research Associate Professor Part-time Non Compensated, and Research Scientist, Full-time retroactive to September 1, 1972. This change came to me as a surprise since in my letter to you of January 29, 1973, and in my meeting with Dr. Joseph Goodgold on February 8, 1973, I stated that the above mentioned titles were not acceptable to me because they imply a lower academic rank than that of Assistant Professor of Experimental Rehabilitation Medicine Full-time which I now hold. Copy of the letter from Vice Chancellor for Academic Affairs, Eleazer Bromberg is attached.

I would like to bring to your attention a few points concerning my academic status. I began as a Full-time Instructor on February 1, 1965. In my seventh year as a full-time faculty member, I was notified that my position at New York University had been reviewed and that you found it necessary to terminate as of August 31, 1972, the appointment which identified me as a member of the full-time academic faculty. Your letter dated July 29, 1971, stated also that this step was being taken in conformity with University Policy to reserve as much as possible the full-time faculty positions, and it's related implications of tenure, for those faculty member whose activities are predominantly instructional.

The University Officer in charge of reviewing my position, did not have the necessary information at his disposal because; (1) my updated curriculum vitae was not requested until the fall of 1971. (2) Since the fall of 1970, I have participated in the teaching of Gross Anatomy to second year medical students. (3) Since the spring of 1971, in addition of teaching a course in Gross Anatomy to first year medical students, I participated in the organization and teaching of a course in Medical Spanish to second year medical students. This included the preparation of a book entitled "Medical Spanish : An Integrated Approach, which is currently being used to teach "History taking from patients in Spanish" to second year medical students..

These points were brought to Dr. Goodgold's attention during the fall of 1971, when I met with him to discuss your notification of change in rank dated July 29, 1971. Thereafter communications with the Dean were initiated for an appointment in a Basic Science Department. Since I was already teaching Gross Anatomy, negotiations with the Department of Cell Biology were pursued. For this reason I accepted from Vice Chancellor Eleazer Bromberg, dated June 9, 1972 as a valid notification of my appointment to the faculty for the academic year 1972-73.

[EXHIBIT K]

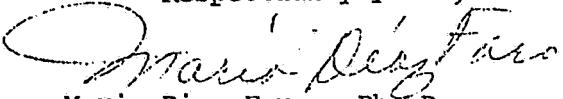
DR. Rusk  
(2)

In your letter of March 23, 1973, you stated that my appointment will be terminated as of December 31, 1973. Since then I have inquired about positions outside your Institute. I should find it very difficult to obtain a position commensurate with my qualifications if after eight years as a full-time faculty member you reclassify me with a lower rank than the one held during any previous year. An academic demotion like this is not compatible with my record of performance. I am enclosing my complete curriculum vitae for your information.

I realize that every effort is being made to curtail expenses. In that respect I have fulfilled your wishes of reducing the expenses of the Asphyxia Project to an absolute minimum. However critical the need to curtail expenses might be, nevertheless it should be independent of my professional competence and academic rank.

I sincerely regret to disturb you with these details, but you are the Chairman and the only one who can clarify this matter.

Respectfully yours,



Maria Diaz Faro, Ph. D.

Assist. Prof. Exptl. Rehab. Medicine

Cc: Dr. Eleazer Bromberg  
Enclosures

[EXHIBIT K]

2 DIRECT EXAMINATION

3 BY MS. BLANK:

4 Q Would you tell the court when you first came  
5 to work at NYU?

6 A I came to work for NYU on February 1, 1965.

7 Q Under what circumstances was that?

8 A I was invited by Dr. William Windle, director  
9 of research at the Institute of Rehabilitation and Medi-  
10 cine of NYU.11 Q Have you worked with Dr. Windle prior to this  
12 time?13 A I worked for Dr. Windle as a technician from  
14 September, 1957 to September, '58, and I also worked for  
15 Dr. Windle since March, '63 to December, '63.16 Q This was when you were in Puerto Rico, is that  
17 correct?

18 A I was in Puerto Rico.

19 Q Could you explain to us what positions you  
20 have held at NYU since you first started working there in  
21 1965?22 A I was hired as an instructor of experimental  
23 rehabilitation medicine, and in 1968 I was promoted to a  
24 title of assistant professor of experimental rehabilitation  
25 medicine, and I have held that title ever since until the

1 lha

Faro-direct

[5]

2 31st of this month, of August of this year.

3 Q During this time that you worked at NYU could  
4 you explain to the court how your research was funded?

5 A My research was funded primarily through  
6 grants to several -- either to me or several members of our  
7 group, our research group. In 1965 according to the  
8 records present in the office of the director of research,  
9 Dr. William Windle at that time, my research was funded from --  
10 my salary was paid --

11 Q We will go into that in a second. Just in  
12 general --

13 A Various grants and from a general grant that  
14 is given to the Department of Rehabilitation Medicine,  
15 referred to us, acting one grant.

16 Q Your research was funded by a general departmental  
17 grant?

18 A By the grants applied for and obtained.

19 Q From both private foundations and government,  
20 is that correct?

21 A Correct.

22 (Plaintiff's Exhibits 1A through 1F were marked  
23 for identification.)

24 BY MS. BLANK:

25 Q Dr. Faro, I show you Plaintiff's Exhibits 1A

[5]

- 10 -

1 lha

Faro-direct

[ 7 ]

2 set forth a confirmation of an appointment to the staff  
3 of the New York University Medical Center for a particu-  
4 lar period with a particular title. Are both sides will-  
5 ing to stipulate that Dr. Maria Diaz Faro was employed  
6 from 1965 through to the present time by the New York Medi-  
7 cal Center and that while a particular letter confirming  
8 employment for a particular year or part of the year  
9 is not present, that the employment was continuous between  
10 1965 to date?

11 MR. PORTH: Yes, your Honor.

12 MS. BLANK: Yes. We have those letters.

13 Mr. Porth has kindly furnished them to us.

14 THE COURT: Well, put them in any way. The  
15 other letters will be marked as Exhibits 1G, H and I, and  
16 those items are stipulated by both parties to be received  
17 in evidence.

18 (Plaintiff's Exhibits 1G, 1H and 1-I were  
19 received in evidence.)

20 BY MS. BLANK:

21 Q Dr. Faro, I want you to explain to the court  
22 how your salary has been paid during this time you have  
23 been working at NYU.

24 A Again, according to the records in the director  
25 of research, Dr. William Windle, my salary in 1965 was

[7]

- 11 -

2 through an NIH grant entitled "Chromosomal" --  
3

4 THE COURT: It is paid by a National Insti-  
5 tute of Health grant, is that correct?  
6

7 THE WITNESS: That's correct.  
8

9 THE COURT: In connection with?  
10

11 THE WITNESS: Chromosomal abnormalities.  
12

13 THE COURT: That's a research grant?  
14

15 THE WITNESS: That's a research grant.  
16

17 In 1966 half of my salary came from a grant from the  
18 Association for the Aid of Crippled Children and have  
19 according to the records, shown that it was paid through  
20 the RT-1 grant.  
21

22 In '67 the same: it was paid the same way.  
23

24 In 1968 it was paid through a grant awarded --  
25 a program grant awarded to Dr. William Windle, and it  
was paid from that fund until 19 -- February, 1971.  
Subsequently, it was paid from the departmental funds from  
the Department of Cell Biology, and from a general research  
grant awarded to the medical school.  
20  
21  
22  
23  
24  
25

Q Could you tell the court just briefly, as far  
as you know, what the RT-1 Fund is?  
21  
22  
23  
24  
25

A The RT-1 Fund is a program grant given to  
the Department of Rehabilitation Medicine for the support  
of research and training of the entire department.  
21  
22  
23  
24  
25

2 Cell Biology at that time, and he discuss with him any  
3 willingness to participate teaching gross anatomy,  
4 and I left his office.

5 Then the next morning I got a call from Dr.  
6 Ross, and he asked me to come over to the laboratories  
7 to start teaching, and I went to the laboratories of gross  
8 anatomy and participated at that time, assisting the  
9 students in dissections and demonstrations of the differ-  
10 ent regions of the head and neck.

11 Q Dr. Faro, could you give the court a little  
12 outline of how the course was set up? Was there a  
13 lecture?

14 A No, there was no lectures at that time.  
15 Only there was radiology demonstrations, in other words,  
16 done by the Department of Radiology, and there were  
17 certain regions that the students dissected, like they  
18 dissected heads, and then we guided them through that,  
19 and we demonstrated to them in models and with special  
20 preparations of how the sensor organs, like the ear and  
21 the larynx and the nose and so on, and the eye --

22 Q About how many students were taking these  
23 courses at any one time?

24 A At that time I think there were over -- about  
25 150 at that time.

lha Faro-direct [ 20 ]

Q They weren't all taught at once in a lab?

3                   A        No.       They were divided in four sessions, about  
4                   35 students.

5 Q How many people taught each section?

6           A        I remember in that section which I was assigned  
7            to teach was Dr. Prutkin and Dr. Kessler.    They had 35  
8            students.

9 Q But is it each -- what I am trying to find out  
10 is whether each person who is teaching anatomy at that  
11 time taught every section.

12           A       No, no.       The same group of 35 students were  
13           taught, or depending on whether there were other  
14           graduate students would go to those three professors  
15           and then the other 35 would go to another three professors,  
16           more or less.

17 Q They would group around in small groups in  
18 the lab watching demonstrations?

19           A        No.       At that time there were four students  
20           to a table, to a cadaver, and every four students  
21           participated in that section, in that cadaver.

22 Q This is where the students dissected the cadaver  
23 themselves?

24 A Yes.

25 Q In addition to that, though, was there a time

2 when the other persons teaching the course did  
3 dissection before the students came in?

4 A In the next -- this was the course of 1970,  
5 the fall course, which was given to second-year medical  
6 students. NYU had for some -- some problems in the  
7 curriculum, some changes in the curriculum, and in 1969  
8 they did not teach anatomy to the medical students. So  
9 in 1970 they taught anatomy in the fall to the second-  
10 year medical students and in the spring of 1971 they had  
11 to teach anatomy to the first-year medical students.

12 That course, normally the fall -- the  
13 fall term is longer than the spring term, so since the  
14 faculty of anatomy had already taught a course in anatomy,  
15 and apparently the faculty was not willing to participate  
16 in a second course for the spring, three professors from  
17 New York Medical College were hired under special con-  
18 tract, as far as I know, and they came to prepare a  
19 course to teach it to the first-year medical students.

20 Q I am still on the fall of 1970. What I was  
21 trying to find out, Dr. Faro, is whether in this anatomy  
22 course, where the students were dissecting the cadavers,  
23 did the professors move around and give various lec-  
24 tures at the table or show them what to do? How  
25 did they know what to do?

1. lha

Faro-direct

[ 22 ]

2. A No. Dr. Prutkin at that time had been  
3. director of the course. He coordinates the course and  
4. he assigns the different professors, what they have to do.

5. Q Did anyone give any lectures?

6. A As far as I know, no.

7. Q The students just came in and started cutting?

8. A It was done by the doctor of rehabilitation.  
9. Dr. Goodgold did one, Dr. Ross did another, but as far  
10. as lectures of anatomy per se on the head and neck,  
11. at that time there were no lectures given by anybody,  
12. as far as I know.

13. Q With whom did you teach? Who were the other  
14. professors teaching this course in November of 1970?

15. A In the section I was with Dr. Richard Kessler  
16. and Dr. Prutkin and myself, and then other sections were  
17. Dr. Cunningham-Rundles, Dr. Bruce Bogart and Dr. Myer and  
18. Dr. Thiessen. That's as far as I remember.

19. The others had other professors, which at  
20. that time I did not meet.

21. Q Now we get to the spring of 1971. Did you  
22. again teach anatomy?

23. A Yes, I did.

24. Q With whom did you teach --

25. A Since the people at New York Medical College

[ 22 ]

2 were specially organized to teach that course, there was  
3 no time and not enough cadavers prepared to teach a  
4 course in the way that we had taught the 1970 course.  
5 So at that time only Professor Rundles from the --  
6 participating in the 1970 fall, the 1970 course, and  
7 me participated. Dr. Prutkin, Dr. Bogart and any  
8 other professors did not.

9 So the teaching staff of that course was Dr.  
10 Louis Bergman, Dr. Alves and Dr. Edward Reith from  
11 New York Medical College and myself and Mrs. Rundles  
12 which took over me -- over the sections with me when I had  
13 to go teach Spanish.

14 Q The three doctors who came from New York Medical  
15 College, do you know what sort of arrangements they had?  
16 They were still affiliated with New York Medical Col-  
17 lege --

18 A No. Dr. Bergman and Dr. Reith were full  
19 professors in the New York Medical College, and Dr. Alves  
20 was assistant professor of anatomy at the New York  
21 Medical College. They came under special contract to  
22 do the course and they left.

23 Q In the spring of 1970 were you teaching any-  
24 thing else?

25 A I taught Spanish. I was asked by Dr.  
[ 23 ]

2 contract basis for three months and we agreed, we all  
3 taught together, and every afternoon we could we are  
4 teaching, and in the morning and lunch hours we prepared  
5 the materials. We interviewed patients and prepared  
6 the materials to teach the students. We had, I think,  
7 10 or 12 students and we taught it in small groups.

8 Q I direct your attention to the fall of 1971.  
9 Did you again teach?

10 A The fall of 1971, yes. I taught gross  
11 anatomy in the fall of 1971.

12 Q With whom were you teaching?  
13 A Dr. Frutkin, Dr. Thiessen and me in Section  
14 A and Dr. Kessler and Dr. Sabino and Dr. Myer in  
15 Section B, and Mrs. Rundles and Dr. Bogart and a lot of  
16 others, Mr. Jeff Mitchell and Mr. Lipsey teaching also.

17 Q Was a Spanish course taught also?  
18 A Not in the fall of '71. It was started in  
19 the spring of '72.

20 Q Was the anatomy course given in the spring of  
21 '72?

22 A No. There was no need because all the  
23 students, the curriculum was up-to-date.

24 Q Did you teach any other course in the spring  
25 of '72?

2 Q Did you yourself talk to Dr. Sabatini about this  
3 appointment?

4 A I tried many times. At various occasions  
5 I find Dr. Goodgold asking me if I have met with Dr.  
6 Sabatini, and I did not. Many times I tried to ask  
7 Dr. Sabatini and I failed, until some time in the spring  
8 of '72. I was able to meet with Sabatini and he  
9 gave me an appointment, and we talk about my appoint-  
10 ment, and at that time he told me that he had promised  
11 various -- that he had discussed with Dr. Potter about  
12 my appointment and about am I willing to get an  
13 appointment in the Department of Cell Biology.

14 He said to me that he had promised -- that he  
15 was promised several positions by the dean and that  
16 he wanted to bring in certain people for his programs, --  
17 and that he was only willing to pay three or four thousand  
18 dollars of my salary if I were to teach gross anatomy;  
19 that many tenure -- everybody that -- why did I want  
20 tenure? Many tenured professors were being asked  
21 to bring their own salary; that if Dr. Rusk and Dr.  
22 Bennett wanted to give me tenure, that it is up  
23 to them.

24 When he asked me to take the \$4000 to teach  
25 anatomy I stated to him everyone else was getting their  
[ 29 ]

2 full salary for teaching anatomy, and in addition I was\*  
3 teaching Spanish. He said he was not responsible  
4 for the Spanish course, that it was the responsibility  
5 of the dean.

6 Q During this time in the spring of 1972 when  
7 you were attempting to get an appointment with the  
8 Department of Cell Biology was someone else hired in that  
9 position in that department?

10 A I remembered distinctly before we finished the  
11 1971-72 fall course, it was with Dr. Prutkin, Dr. Prutkin  
12 told me they were hiring Dr. Alves, and a little later  
13 Dr. Alves came in February, and I remember Dr. Prutkin stat-  
14 ing that he was not going to assign any teaching jobs to  
15 Dr. Alves until the fall term of 1972 started.

16 Q What exactly was Dr. Alves doing when he --

17 A As far as I know, not teaching. As far as  
18 I know, there was nothing else for him to do except --

19 Q Was he doing research?

20 A I don't think there was anything there for  
21 research because there was a lot of remodeling in the  
22 different labs for the coming of Mr. Sabatini.

23 Q As far as you know, he did nothing?

24 A As far as I know, yes.

25 Q Do you know if he was being paid for doing

[ 30 ]

2 that Dr. Rusk did not wish to promote me to associate  
3 professor, that the reasons were financial, that if I had  
4 gotten a grant of five years, a five-year grant, I would  
5 be promoted, that I said to him that finances to me are  
6 not a principle, that I have never asked him for a pro-  
7 motion or for a raise, that if he could not promote me --  
8 I wanted to keep my own title, but I didn't want to  
9 accept an academic demotion like the one they were  
10 giving me.

11 After discussing many reasons, he tried to say  
12 to me why did I want tenure, and I said to him that --  
13 he said to me that the job offer they were making me, I  
14 would have the same benefits.

15 Then I said to him that one of the benefits  
16 I would not have is the benefits of sabbatical leave,  
17 and he stated that in Dr. Rusk's department nobody has  
18 taken sabbatical leaves and they are not normally  
19 approved.

20 I said to him, "I do not know, I do not want  
21 to give up my rights, I do not know if tomorrow -- some  
22 years from now I want to take a sabbatical leave to  
23 go some place to finish some research, and besides, people  
24 change and situations change."

25 So we kept on discussing until when he saw  
[ 34 ]

2      that I was not going to give in, I said to him, "Let's  
3      play equal on each side of the fence. You don't  
4      give me a promotion, but I don't ask you to give me a  
5      promotion, don't give me a demotion, just leave me where  
6      I am."

7      Then he asked me if I was going to make  
8      trouble for NYU. I said to him no, and he said to me  
9      that he was going to tell me something, but that if I  
10     repeat it he will deny it, and he said to me that I  
11     have not been given enough notice, that I have not been  
12     demanding, that that letter was sent to 10 people and  
13     the only one who did not sign it was me, that he will  
14     not sign that letter either, that that will be reflected  
15     in my record as an academic demotion, that it would show  
16     that I was incompetent and that I was not <sup>"</sup>competent,  
17     at least I had not been told that I was, and that he would  
18     talk to Dr. Rusk and Dr. Bennett to maintain the  
19     status quo and keep me as an assistant professor.

20     Q      Did you thereafter receive a letter from Dr.  
21     Rusk?

22     A      Yes. I received a letter.

23     Q      Is this the letter you received?

24     A      I received a letter March 23rd. Yes, it  
25     is.

2                   title was research scientist and research associate  
3                   professor, noncompensated, part-time.

4                   Q        In other words, despite the fact that you  
5                   had not signed the waiver of rights, it went through  
6                   anyway?

7                   A        The demotion was.

8                   Q        In view of the fact that it looked like you were  
9                   actually going to have to leave the university what did  
10                   you do at that time?

11                  A        I look, I contacted the different medical schools  
12                  in the New York City area for possible positions, and I  
13                  talk to almost every chairman and they ask me to send  
14                  them the curriculum vitae.        There were only two posi-  
15                  tions available, one in the dental school of NYU and  
16                  the other at New York Medical College.

17                  Q        Did you apply for those jobs?

18                  A        I did.

19                  Q        Do you have letters --

20                  MR. PORTH:    I have no objection.

21                  MS. BLANK:    We probably don't have to  
22                  admit them into evidence.    It is not contested.

23                  THE COURT:    All right.

24                  Dr. Faro, you were not offered either of these  
25                  two positions, is that correct?

[ 37 ]

2 THE WITNESS: I was not offered, no.

3 BY MS. BLANK;

4 Q Or any of the other positions you applied  
5 for?

6 A Or any of the other positions.

7 THE COURT: We just had two, I thought.

8 MS. BLANK: Then let me put them in, because  
9 there were a number of them.

10 THE COURT: Have you since April 9, 1973  
11 actively searched for a position?

12 THE WITNESS: Yes, in about 10 different  
13 medical schools, yes.

14 THE COURT: Since April 9, 1973 have you  
15 been offered any position with any of these medical  
16 schools?

17 THE WITNESS: None of the ones -- I was  
18 offered a part-time position in New York City College.

19 THE COURT: In New York City?

20 THE WITNESS: City College, teaching.

21 THE COURT: That's not their medical school?

22 THE WITNESS: It is beginning to be a  
23 medical school now.

24 THE COURT: Do you have a sheaf of rejection  
25 slips?

2 office on May 11th, and he in there told me that  
3 promotion to associate professor was not automatic, that  
4 I did not have any rights to be promoted, and I stated  
5 that I did not see any reason why I should leave the medi-  
6 cal school since there are other teaching jobs in the  
7 medical school that were being offered to other people  
8 and not to me, and some of them I had already held.

9 Then he said to me that Dr. Potter had  
10 tried to help me but that he had no power, and that I  
11 was a human being, and that I was dealing with a  
12 corporate estate.

13 THE COURT: You really were what?

14 THE WITNESS: I was a human being, that I  
15 was dealing with a corporate estate.

16 BY MS. BLANL;

17 Q Was there a time during that spring of 1972  
18 period that Dr. Goodgold came to your office and you  
19 had a conversation?

20 A He came looking for space presumably for some  
21 other investigator on May 9th and we had a long conversa-  
22 tion about the different problems in the department, and  
23 he assured me that competence and integrity were not im-  
24 portant, but that politics and power were important for  
25 the medical school.

2 Q Let me just save some time. You were  
3 subsequently rejected for this dental school appointment,  
4 were you not?

5 A Yes, I was rejected by letter of June 29,  
6 1973.

7 Q Exhibit G, I believe.

8 Let me direct your attention to August of  
9 this year. Did you have another meeting with the  
10 university administration?

11 A That's right. The Association of Women in  
12 Science arranged, Mrs. Jackson Priel, an attorney,  
13 which happened to be also a member of the medical center  
14 board, and I called Mrs. Priel and I made an appointment  
15 with her and I explained all my case.

16 Mrs. Priel said to me after looking at all the  
17 letters --

18 MR. PORTH: Objection, your Honor.

19 THE COURT: Sustained. You went to see  
20 Mrs. Priel. Eventually you went to see your present  
21 counsel, is that correct. Is that what you are driving  
22 at?

23 MS. BLANK: Actually, I was trying to focus  
24 in on the August 6th meeting.

25 THE WITNESS: Mrs. Priel arranged a meeting  
[ 44 ]

2 sent them all to Dr. Potter and Dr. Bromberg and they had  
3 copies of them, and I explained to him that I was  
4 surprised they had come in there to make satisfactory  
5 settlement and yet they were not prepared and t  
6 don't seem to have knowledge of what the problem was  
7 about.

8 Through the discussions Dr. Bennett tried to  
9 insist on me that I had been given enough notice, that I  
10 had not liked the decision of the Department of Rehabili-  
11 tation Medicine in not giving me promotion and tenure.  
12 And then I started to explain to him the different events  
13 that went through before I was told on August 8th of  
14 1973 that I was not going to be promoted.

15 He said to me, "Well, after all this time now  
16 you come to claim that you have the right to promotion  
17 and tenure," and then I said to him that the last  
18 time I talked to someone about my appointment -- Dr.  
19 Goodgold -- there was a different -- the understanding  
20 was that ~~Dr. Goodgold~~ was going to talk to him to see if  
21 they could maintain my ~~assistant~~ professor status and  
22 not to have ~~to be demoted~~.

23 Then at that time, although I had not told to  
24 anybody before the fact that Dr. Goodgold had told me  
25 that he would not sign the letter and so on, I had to tell  
[ 46 ]

1 Iha

Faro-

[ 49 ]

2 direct examination?

3 MS. BLANK: I am.

4 THE COURT: We will take a five-minute break  
5 and when we come back we can put on Dr. Sabatini.

6 (Witness temporarily excused.)

7 (Recess.)

8 THE COURT: Dr. Sabatini, I will take you out  
9 of order.

10 DAVID SABATINI, called as a witness  
11 by defendant, being first duly sworn, testified  
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. PORTH:

15 Q Dr. Sabatini, are you now employed by New York  
16 University?

17 A Yes, I am.

18 Q In what capacity?

19 A I am the chairman of the Cell Biology Depart-  
20 ment.

21 Q How long have you been chairman of the Cell  
22 Biology Department?

23 A I came in October, 1972.

24 Q Is the department divided in two parts?

25 A Yes.

[ 49 ]

1 lha Sabatini-direct [ 50 ]

2 Q What are those parts called?

3 A Anatomy and Cell Biology.

4 Q Was Dr. Alves a member of your Department of  
5 Cell Biology?

6 A Yes.

7 Q Do you know when he was employed by the  
8 university?

9 A He was employed one year before as a visiting  
10 assistant professor to teach a course, and then he was  
11 employed shortly before I came, again as an adjunct asso-  
12 ciate professor.

13 Q Has he now left?

14 A He is now in Brazil.

15 Q He left at the end of August?

16 A He left actually September 1st. He was paid  
17 until September 1st.

18 Q Do you have a copy of Dr. Alves' curriculum vitae?

19 A Yes, I do.

20 MS. BLANK: I have no objection.

21 (Defendant's Exhibit A was received in evi-  
22 dence.)

23 THE COURT: Counsel, before we go off any  
24 further, I made a note on the spelling of the name in  
25 Dr. Faro's testimony as "Albes." Is this the same  
[ 50 ]

2 person, Alves, and pronounced with the Spanish "b" for  
3 "v"?

4 MS. BLANK: Yes, it is the same person.

5 BY MR. PORTH:

6 Q Is Dr. Alves the author of any books on  
7 medical subjects?

8 A Yes. He is the author of 10 or 15 books.  
9 I brought the more important one. He is a very pro-  
10 lific writer.

11 Q You have a book with you?

12 A Yes. This is one of them.

13 Q What is the book?

14 A This book is on topographic anatomy. He is  
15 a very well-known anatomist. He has written many  
16 textbooks. He also wrote a manual for students, which  
17 I have here. He wrote this book and I have others which  
18 are very thick, two volumes. They are all on anatomy.

19 Q When Dr. Alves was a member of the faculty, the  
20 Department of Cell Biology, can you tell the court what  
21 his duties consisted of?

22 A He was really a star teacher. He was a great  
23 anatomist, a retired surgeon. Therefore, we thought  
24 that he could reorganize the whole teaching of anatomy.  
25 He did. He introduced cross sections, he prepared

1 lha Sabatini-direct [ 52 ]  
2 human materials specially for demonstrating to students.  
3 We built two special rooms for his use so that he could  
4 give conferences two times a day, and he gave special  
5 courses for the students who were going to take their  
6 boards, and this is their -- the handout they gave for  
7 that course. And he also began to train some  
8 of the anatomy there in the techniques which he mastered.

9                   We went into building models, we developed a  
10                  system of slides.    He in fact was such a superb person  
11                  that we decided to promote him to full professor at the  
12                  end of the first year, which we did.    Unfortunately,  
13                  that didn't prevent him from leaving and going back to  
14                  Brazil.

15 Q Did Dr. Aviles give lectures on anatomy? . . . . .  
16 A He preferred to call it conferences. I  
17 always insisted that these were such beautiful lectures  
18 he should give them in the main auditorium, and I  
19 could only get him to do so for this course he gave for  
20 the students for the boards. For the students in the  
21 first year he preferred to give lectures or conferences,  
22 as he wanted to call them, in the special auditoriums  
23 which we built, which were vertical auditoriums, where  
24 he could speak to many people, and he did.

25 Q Were lectures given in the course by other  
[ 52 ]

1 lha

Sabatini-direct

[ 58 ]

2 getting salaries in some cases less than what Dr. Faro  
3 was getting.

4 And then subsequently I am going to go into  
5 this conversation that Dr. Faro had with Dr. Sabatini  
6 in which he offered her again a position of the same  
7 character that was the same type of work being performed  
8 by these other medical doctors.

9 THE COURT: No, it won't come in. I tell  
10 you what I will let you do. I will let you withdraw your  
11 offer if you produce one that includes everybody, including  
12 Dr. Faro.

13 MR. PORTH: I will do that.

14 BY MR. PORTH:

15 Q Dr. Sabatini, is there any vacancy in the De-  
16 partment of Cell Biology at the present time?

17 A Well, the appointment of Dr. Alves was an  
18 appointment in a nontenure track. That means that  
19 this amount of money we could allocate in the best form,  
20 much more flexible than when we have a fixed position.  
21 Therefore, what I have chosen is to appoint another  
22 person in the same type of position, an adjunct associate  
23 professor.

24 Q Who was that?

25 A Dr. James Shafland, who came actually a month  
[ 58 ]

1 lha

Sabatini-direct

[ 59 ]

2 before Dr. Alves left. For this year we have decided  
3 to just go with these people we have.

4 Q Do you have a curriculum vitae for him?

5 A I have a very brief summary. I do have the  
6 manual of anatomy that he has written. He was awarded  
7 a medal as the best anatomy teacher for the year, and this  
8 is the reason we brought him in an effort to reinforce the  
9 teaching of anatomy.

10 So I do have that and I do have a brief  
11 resume.

12 MR. PORTH: I offer it in evidence.

13 MS. BLANK: I have no objection.

14 (Defendant's Exhibit C was received in evi-  
15 dence.)

xx 16 THE COURT: It was marked for identification  
17 and it is received in evidence. Plaintiff's counsel in-  
18 dicated she has no objection.

19 Is that correct, Ms. Blank?

20 MS. BLANK: I have no objection, no.

21 (Defendant's Exhibit D was marked for identi-  
22 fication.)

xx 23 MS. BLANK: No objection.

24 (Defendant's Exhibit D was received in evi-  
25 dence.) [ 59 ]

1 Iha Sabatini-direct [ 60 ]  
2

2 BY MR. PORTH:

3 Q Is Dr. Shafler now working in the Department  
4 of Cell Biology?

5 A Yes, he is.

6 Q Can you describe the work he is doing?

7 A Well, he is giving what he calls conferences  
8 three times a day, 10, 1 and 3, in Room 490 of the Medical  
9 Sciences Building, and so the whole class listens to Dr.  
10 Shafler at least once a day in these three groups.

11 In addition to this he is taking over most of  
12 the functions of Dr. Alves, so he is preparing dissection  
13 material, he is training some of the laboratory aids or  
14 assistants that we have, he is organizing the lectures,  
15 he has invited several guest speakers and he gives some  
16 of the lectures himself. He has organized a program  
17 of approximately, I would say, 30 lectures in anatomy,  
18 in addition to those that he gives himself, which are very  
19 numerous.

20 Q Dr. Sabatini, you were here during the testimony  
21 of Dr. Faro this afternoon. Do you recall Dr. Faro's refer-  
22 ence to having a meeting with you?

23 A Yes.

24 Q In, I think it was, the spring of this year?

25 A No, I don't recall exactly. It was before

[ 60 ]

- 34 -

1 lha Sabatini-direct [61]  
2 I came to NYU, as Dr. Faro mentioned, in 1972. She tried  
3 to contact me. I wasn't a member of the faculty of  
4 NYU but it was known that I was going to come later.  
5 So she arranged to see me and one day I went there with  
6 the purpose of seeing her and talking to her.

7 Q Where was that?

8 A That was in the library of the Cell Biology  
9 Department.

10 Q Do you recall that conversation?

11 A Yes, I do.

12 Q Can you tell us what was said by you and Dr.  
13 Faro?

14 A Yes. I had seen that Dr. Faro had helped with  
15 the course of anatomy that we were giving and I offered  
16 Dr. Faro to continue doing that and I offered her the  
17 remuneration that we were normally paying for that task.

18 The course usually runs for between September  
19 and Christmas, and involves some hours for each -- it  
20 doesn't involve the person to come only for the provision  
21 of the course, and not full time, and the remuneration  
22 is in the order of \$4000.

23 I also recall that I asked Dr. Faro -- Dr.  
24 Faro said that she would like an appointment in the de-  
25 partment, and I asked Dr. Faro if her interest was in doing  
[ 61 ]

1 lha

Sabatini-direct

[ 62 ]

2 research in cell biology -- I know that she was inter-  
3 ested in research -- and she said that in fact she had an  
4 active plan of research which she wanted to continue in  
5 rehabilitation medicine, that she wanted the appointment,  
6 but she would come with the purpose of only participating  
7 in the teaching of the course.

8 Under those conditions the usual arrangement  
9 in the department was that we were paying the smaller  
10 amount of money and not giving an appointment or a full  
11 salary. All other persons who have a full salary  
12 and appointment have a laboratory within the department,  
13 work in sections which are in the domain of the depart-  
14 ment activities, not in other aspects, like rehabilitation  
15 medicine.

16 So I understood Dr. Faro's request to be anom-  
17 olous for what I intended the department to be, but I offered  
18 to her this arrangement. In other words, to continue  
19 on the same basis and the department contribute to her  
20 salary in this amount.

21 Q This position that you offered Dr. Faro, was that  
22 the same type of position that she had filled in the  
23 Department of Cell Biology previously?

24 A Exactly.

25 MR. PORTH: No further questions.

[ 63 ]

2 Q Turning your attention to the conversation  
3 that you had with Dr. Faro in the spring of 1972, I  
4 believe it was, before you came to the department, you  
5 testified that you offered her basically about a \$4000  
6 salary.

7 A That's correct.

8 Q Correct me if I am wrong. I am not sure  
9 about your testimony. In one instance you said  
10 people who were appointed in the Cell Biology Department  
11 basically should do their research in that department.  
12 There was some objection to the fact that her labs  
13 were set up in the building of the Rehabilitation --

14 A No. I said, first of all, her research  
15 should be separate which belongs to the Department  
16 of Cell Biology, and I believe the research of Dr. Faro  
17 on the effects on monkeys were not cell biology.

18 Second, that -- you see, I would have never  
19 appointed Dr. Faro as a teacher of anatomy. I would  
20 have only taken her to assist in the laboratory course  
21 because I don't believe Dr. Faro has experience as an  
22 anatomy teacher.

23 What we need, people who really know anatomy  
24 and can teach anatomy. Dr. Faro didn't have that  
25 experience in my opinion. Therefore, I was ready to  
[ 77 ]

1 lha

Sabatini-cross-redirect

[ 78 ]

2 offer her what I call a participation in the course  
3 at the level of being an assistant. This is what  
4 I do with all the surgeons and residents who want to  
5 participate, and actually it is what I would do for Dr.  
6 Faro now, if she wanted.

7 MS. BLANK: I have no further questions.

8 REDIRECT EXAMINATION

9 BY MR. PORTH

10 Q Dr. Sabatini, what faculty or what academic  
11 appointments did you hold prior to coming to New York  
12 University?

13 A I was associate professor of cell biology at  
14 Rockefeller University. I had -- I was an assistant  
15 professor -- actually, I think I was wrong. The last  
16 appointment at Rockefeller University was as a professor.

17 Q Full professor?

18 A Full professor. This was given to me just  
19 before I decided to move to NYU.

20 Q At Rockefeller University?

21 A Rockefeller University.

22 Before that I was an associate professor.  
23 Before that --

24 Q Can you tell me how many years in each cate-  
25 gory?

[ 78 ]

- 38 -

1 mda

Faro-cross

[ 83 ]

2 ends with the year 1970, is that correct?

3 A More or less, yes.

4 Q Item 19?

5 A Item 19, yes.

6 Q As a matter of fact, you did carry on research  
7 activities in 1971, 1972 and '73, isn't that correct?

8 A That's right.

9 Q I show you a copy of a curriculum vitae in  
10 your name marked Exhibit E for identification and ask you  
11 if that is your curriculum vitae and whether you pre-  
12 pared it.

13 A That's right. It goes to 1972.

14 MR. PORTH: I ask that Exhibit E for iden-  
15 tification be received in evidence.

16 THE WITNESS: Somehow from this copy there  
17 were two items missing.

18 Q Actually three items missing?

19 A Three items, yes.

20 MS. BLANK: No objection.

21 (Defendant's Exhibit E was received in evi-  
22 dence.)

23 BY MR. PORTH:

24 Q You indicate in Defendant's Exhibit E that you  
25 taught a course in anatomy at New York University in 1970,  
[ 83 ]

2 is that correct?

3 A That's right.

4 Q On what date did that teaching begin?

5 A Somewhere in November. I don't remember  
6 exactly.

7 Q In November of 1970?

8 A That's right.

9 Q And how long did it continue?

10 A It continue up to February, until the end of  
11 the course.

12 Q Until February of 1971?

13 A February 17th or 22nd, around that time.

14 Q How many days a week were you engaged in  
15 that particular activity?

16 A If I recall correct, there were at least  
17 two mornings a week that we were meeting.

18 Q When you say two mornings what would the hours  
19 be?

20 A Most likely from 9 to 1, or something of that  
21 sort.

22 Q When you were not doing this work in gross  
23 anatomy what were you working at at New York University?

24 A When I was not doing --

25 Q When you were not working in the gross anatomy

2 laboratory.

3 A Besides the actual time dedicated to the  
4 studies there was actual preparation time and I was  
5 working in my own research project.

6 Q You talk about preparation time for this gross  
7 anatomy laboratory?

8 A Yes.

9 Q How many hours a week did you spend on that?

10 A How many hours? Being that I had been away  
11 from -- from anatomy quite a long time, I would say that  
12 it took me at least from two to three afternoons a week  
13 to review so that I could be prepared for it.

14 Q This was your personal review that you under-  
15 took on your own, is that correct?

16 A No, the following of the book. Dr. Prutkin --  
17 I don't know, I think that was stated in the previous  
18 testimony. There is a certain amount of work that  
19 has to be covered within a certain time and with a certain  
20 amount of depth to the study, and the professor is  
21 supposed to teach the student with that amount of detail,  
22 with that amount of evenness, so that every student is  
23 exposed to the proper amount of work, and Dr. Prutkin had  
24 a dissection manual in which a certain amount of pages  
25 had to be covered per session.

2 Q Was there a certain section that you were  
3 assigned to at this time in this period from 1970 to  
4 '71?

5 A In 1970 there were four sections, the class  
6 of 150 or 160 students was divided in four sections  
7 and I was in one of the sections, like there were about  
8 three professors to each section. I remember in my  
9 section Dr. Kessler, Dr. Prutkin and me were in there.

10 Q Then you say you taught gross anatomy in  
11 1971?

12 A That's right.

13 Q Was this a different period from the period  
14 in the early part of '71?

15 A That's right.

16 Q When did that start and when did that end?

17 A Okay. Right after the course of the fall,  
18 the 1970 fall course ended, we were asked to prepare for  
19 the 1971 course. The 1970 course was taught to second-  
20 year medical studies, and the 1971 course was taught to  
21 first year medical studies. This course was not going  
22 to be taught by the regular faculty, teaching faculty  
23 of anatomy, at New York University, this course was  
24 taught by faculty hired besides me and Mrs. Rundles, by  
25 faculty hired from -- on a special contract from New York  
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2 Medical College, and the members of the New York Medical  
3 College staff which came were Dr. Louis Berman, Dr.  
4 Edward Reith and Dr. Emanuel Alves. They came down.  
5 As soon as the other course was over we started to  
6 prepare prospected material for the next course.

7 Q And when was that?

8 A The course I remember started early March, but,  
9 no, the actual teaching was supposed to start early  
10 March, but as soon as we could get off the other  
11 course each one of us went into a dissecting room and  
12 dissected one cadaver, each one of us did one. And  
13 each one of us used this cadaver to teach the studies.  
14 There were three lectures a week.

15 Q Three what?

16 A Three lectures a week given by Dr. Berman or  
17 Dr. Reith, and this was given in a large auditorium  
18 to the whole 160 students. The number is take five  
19 more plus or minus.

20 Q I thought you had said at your testimony last  
21 week there were no lectures given in this course?

22 A No, no, no, in the 1970 fall course there were  
23 no lectures except two given by Dr. Goodgold and Dr.  
24 Rusk and Dr. Matthew Lee from the Department of Rehabilita-  
25 tion Medicine. They were not anatomy lectures, these

2 were how anatomy relates to patients in rehabilitation  
3 medicine. But in the 1971 course, spring course,  
4 there were lectures, there were three lectures a week  
5 given by Dr. Reith or Bergman and this given from 9 to  
6 10 o'clock every Monday, Wednesday and Friday.

7 On that same morning, those same mornings  
8 were taped, not in serial, how the studies were taken,  
9 but in a separate room they were taped and the contents  
10 of the lectures were brought to 20 minutes so that these  
11 students could review the lectures later.

12 So far as lectures, Dr. Alves did not give  
13 lectures, I did not give lectures, Mrs. Rundles did not  
14 give lectures.

15 Then as far as the laboratory goes, there were  
16 roughly 80 students on each side -- there were four rooms  
17 in which there were 80 students at a time. The student  
18 had to take a laboratory course four days a week,  
19 every day except Friday. They were Monday and Wednesday  
20 afternoons and Thursday and Tuesday mornings.

21 Dr. Alves had a group of students. He had  
22 one cadaver, and 20 students would come to him. I  
23 would have another cadaver in another room, and the 20  
24 students that came to Dr. Alves now would go to me for  
25 review. If the students had absorbed the amount of  
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1 mda

Faro-cross

[ 89 ]

2 material Dr. Alves taught them they could identify the  
3 same parts in the cadaver I had at ease and nothing  
4 else was given. This happened at the very beginning  
5 with the interior body wall.

6 The minute we opened the chest and the  
7 structures start to be more complicated, and not only  
8 complicated but the margin of observation of the  
9 students was less because the minute the chest is opened  
10 all the 20 students have to go around and look down  
11 and there is no room for the students to look. So  
12 some of the students in Dr. Alves' class were taking  
13 notes and listening to what he was talking about but  
14 they were not seeing what he was showing, so as this  
15 proceeded these students started to get lost, they  
16 couldn't absorb the material all completely. So that  
17 means that I had to give prosection lectures in the  
18 same way Dr. Alves was doing until the students were satis-  
19 fied they had absorbed the material and there were as  
20 many prosection lectures as needed; at least four in  
21 each session and sometimes 10 in each session.

22 Q Four or 10 what?

23 A Four or 10.

24 Q What?

25 A Prosection lectures.

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2 Q I'm sorry. I didn't get that.

3 A Prosecution conferences. Like film showing  
4 like the heart; I can take the heart out and I can show  
5 it here to a lot of students. But if I am looking  
6 at the veins, at the pulmonary veins, these are  
7 structures in the back so that means at the most five  
8 students can be around me watching that. So if I have  
9 20 students I will have to demonstrate it four times  
10 so that every student not only hears me but also sees  
11 what I am showing. So this is the nature of the  
12 course.

13 So every afternoon or every Tuesday and Thurs-  
14 day there were 80 students passing through. In Dr.  
15 Reith's there was the same thing. From Dr. Reith  
16 they went to Dr. Bergman. This is the way the course  
17 was taught.

18 Q Dr. Faro, can you try to keep this simple?  
19 The only thing I wanted to know at this point is when  
20 did this particular course start and when did it finish?

21 A It finished very late in May, around May 26th,  
22 because there was a course from the surgery department  
23 that was coming and they needed the tables, so we had to  
24 really --

25 Q It started when?

2 A It started early March.

3 Q It stated in March and went until --

4 A May 26th, around that time.

5 Q So it was a period of about three months?

6 A That's right.

7 Q Was the group divided into sections at this  
8 time?

9 A Sections A and B would be going every morning.  
10 There were 80 students going through and they were in  
11 groups of 20 students at a time. Every 40 minutes there  
12 were 20 students changing from one room to the other.

13 Q Who were the other people who were working?

14 A Nobody else.

15 Q Just you and Dr. Alves in this particular sec-  
16 tion?

17 A In this particular section. And then in  
18 the afternoons, when I had to go to teach Spanish, Mrs.  
19 Rundles would take over for me.

20 Q You say you taught this twice a week during  
21 this period?

22 A It was four times a week, but since I had to  
23 speak Spanish Mrs. Rundles would take the other two  
24 afternoons for me.

25 Q What hours was this course taught?

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2 A From 9 to 10, to 10:30 sometimes because  
3 as the complexity of the structures proceeded, like in the  
4 neck the structures are small so more conferences had  
5 to be given so it takes more time.

6 Q So it was the equivalent of one day a week?

7 A No, more.

8 Q Didn't you say two days in the morning?

9 A Two days in the morning plus --

10 Q Oh, two days a week.

11 A No, remember in the afternoon we had to pro-  
12 sect. This is of actual teaching. But the prepara-  
13 tion, we had to prospect; like if we did the chest, we had  
14 the interior body wall so in order to get to the heart  
15 we had to take the interior wall and dissect out so the  
16 heart could be ready for the students the next day.

17 Q Then you were teaching in this particular  
18 course two days a week in the morning?

19 A At least two days anyhow, because Fridays  
20 we had to prospect too.

21 Q And in the afternoon?

22 A Of Friday?

23 Q You said you worked in the afternoon. How  
24 long did you work in the afternoon?

25 A In the afternoons of Tuesdays and Thursdays I  
[ 92 ]

2 worked prosecuting and in the mornings of Fridays pro-  
3 secting.

4 Q So you say this was about two and a half days  
5 a week during this period?

6 A That's right. In actual time that's right.

7 Q Then you say that you also taught gross  
8 anatomy in 1972?

9 A That's right.

10 Q And when did that course begin and end?

11 A September 10th, after Labor Day, the Monday  
12 after Labor Day.

13 Q When did it end?

14 A It ended in February, late February, around  
15 the 17th or 22nd of February.

16 Q When you say 1972 then you are referring to --

17 A 1971.

18 Q -- 1971 to early 1972, is that right?

19 A That's right.

20 Q Were the students again divided into groups?

21 A In this course Dr. Prutkin was in charge, and  
22 the way Dr. Prutkin liked to run this course is by  
23 having the students dissect the cadaver with guidance from  
24 us. He divided all the students into four sections and  
25 he assigned three professors to each section. I was

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2 with Dr. Prutkin in section A, so I taught with him  
3 and Dr. Theissen together. So the students dissected  
4 the trunk and we prosecuted the rest of the body, and it  
5 was done by prosecution the same way we had to take extra  
6 time that we were not teaching and go and dissect the  
7 different structures.

8 Q How many days a week did you teach during this  
9 particular period?

10 A Again it was about the same time as we taught  
11 in 1971 in the spring.

12 Q So during this particular period about two  
13 and a half days a week?

14 A That's right.

15 Q You also say you taught medical Spanish in 1971?

16 A Yes.

17 Q During that period of time was that course  
18 given?

19 A We started to organize the course in very  
20 late February or early March and we used to meet three  
21 times, three afternoons a week; Mondays, Wednesdays  
22 and Fridays, from 1 to 4.

23 Q So you were teaching nine hours a week?

24 A On that, besides the preparation time.

25 Q When did you say this terminated?

2 A I would say 25 per cent teaching and the rest  
3 research.

4 Q Can you tell us the circumstances under  
5 which you commenced this work in the gross anatomy  
6 laboratory in 1970?

7 A I went to Dr. Potter and told him I wanted to  
8 teach.

9 Q You went to Dr. Potter, the associate dean?

10 A That's right.

11 Q And told him you wanted to teach?

12 A That's right.

13 Q Was there any reason you wanted to teach  
14 at that particular time?

15 A I wanted a basic science appointment. I  
16 had enough time and enough material to use graduate  
17 students. Without a basic science appointment I  
18 cannot have graduate students, so I asked Dr. Potter  
19 that I wanted to belong to a basic science department so  
20 that I could have graduate students.

21 At that time they were in dire need of profes-  
22 sors for anatomy because they only had Dr. Prutkin and  
23 Dr. Bogart teaching besides the surgeons, and my grant,  
24 the grant that pay my salary, would have terminated as  
25 of February, 1971.

[100]

2 Q Isn't it a fact, Dr. Faro, that the reason  
3 that you applied for this was because of the fact that  
4 the money was running out on these research grants?

5 A Money had been running out from all research  
6 grants through the years. That doesn't stop one  
7 from working.

8 Q Did you go to Dr. Rusk and talk to him about  
9 the possibility of getting other funds?

10 A We had funds at that time. We still had  
11 funds. The idea was that the salary that -- the  
12 grant that pay my salary was going to run out and Dr.  
13 Rusk had -- we had enough research going on, so I wanted  
14 to get money from somewhere else so that we could keep  
15 the research going so I can contribute my teaching, even  
16 though I have to do extra work.

17 Q And you wanted to continue with your research  
18 work?

19 A I do.

20 Q Before you talked to Dr. Potter you spoke to  
21 Dr. Rusk about this?

22 A Oh, no, I went straight to Dr. Potter.

23 Q You went to Dr. Potter directly?

24 A First.

25 Q Did you talk to Dr. Rusk about it afterward?

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2 That it was extended a year without financial funding.

3 MR. PORTH: I ask that Exhibit J for identi-  
4 fication, consisting of two letters, be marked in  
5 evidence.

6 MS. BLANK: No objection.

7 THE COURT: Received.

8 (Defendant's Exhibit J was received in evi-  
9 dence.)

xx 10 BY MR. PORTH:

11 Q On the basis of your testimony up to this  
12 point, Dr. Faro, do I understand correctly that up until --  
13 let's say from the time you came to New York University  
14 in 1965 up until February 28, 1971, you were engaged  
15 solely in research activities?

16 A Up to 1971, yes, except for the summer students.

17 Q I am sorry. I didn't mean to lead you  
18 astray there. There was some teaching that you say you  
19 did do in the latter part of 1970?

20 A That's right.

21 Q But aside from that it was all research work?

22 A That's right. Research work and administra-  
23 tion.

24 Q You mentioned the other professional person-  
25 nel who were engaged in this particular research project

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2 with Dr. Windle.

3 A Yes.

4 Q How many of them are still at New York  
5 University?

6 A Only Dr. Barker is at New York University.

7 Q That is Dr. June Barker?

8 A Dr. June Barker, that's right.

9 Q And you?

10 A And me.

11 Q Were you the only two women in that group?

12 A That's right.

13 Q And you are the only two who are still at the  
14 university?

15 A No, the others chose -- each one of them found  
16 better jobs outside at an earlier time.

17 Q As I understand it, you testified last week  
18 that at some time your research was funded by what you  
19 refer to as RT-1 funds, is that correct?

20 A That's right.

21 Q Do you know when that commenced?

22 A This has been a long-time grant, as far as I  
23 know, that Dr. Rusk has had for many years, and it is a  
24 blanket or a program grant and covers a lot of programs.

25 Q Was your salary paid from any of those grants?

[114]

2 fore.

3 A My understanding is that this has been  
4 a long-term program grant to Dr. Howard Rusk in which  
5 every member of the Department of Rehabilitation Medicine  
6 writes up a program and reports every year, and Dr. Rusk  
7 coordinated how much that person is going to be paid by  
8 that fund or how much from the research of that is  
9 charged to that fund and every year they get on the  
10 order of over a million dollars, and every year we split  
11 it up. Like I have a project, Dr. Barker has a project,  
12 every member of the Department of Rehabilitation Medicine  
13 has a project, some of them have two and three and four  
14 projects.

15 Q So this is a research fund which has come to  
16 the Institute of Rehabilitation Medicine or the  
17 Department of Rehabilitation every year so far but it's  
18 done on a yearly basis?

19 A That's right.

20 Q And this is used to support these research  
21 projects?

22 A This is used, as far as I know, to pay tenure  
23 and nontenure faculty of the Department of Rehabilitation  
24 Medicine.

25 Q As determined by Dr. Rusk?

2 not have come.

3 Q Are you saying a grant was procured for this  
4 purpose?

5 A Grants were procured for this purpose, and  
6 besides this was instrumental in getting other grants.

7 Q That particular grant you spoke of was Dr.  
8 Monroe's grant?

9 A It was for Dr. Monroe but in 1967 it was  
10 transferred to New York University.

11 Q Did you on your own apply for any grants?

12 A Yes, we did.

13 Q Did you receive any grants?

14 A From the federal government, no. From the  
15 Association for Retarded Children, yes.

16 Q Will you repeat that?

17 A From the federal government, I did apply to  
18 several but I was not awarded any government contracts.  
19 However, I was awarded a grant from the Association for  
20 Regarded Children.

21 Q When did you get that grant?

22 A I think it's 1969.

23 Q How much was it?

24 A For \$10,000.

25 Q Is that the only grant you procured?

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1 mda

Rusk-direct

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2 left the department, which was formally in 1971, but he  
3 began to phase out his activities in 1970 when he was a  
4 visiting professor in California and had other outside  
5 assignments.

6 Q Did you have any discussions with Dr. Windle  
7 about the time that this program was being phased  
8 out?

9 A I did, and prior to that I said that we simply  
10 did not have the funds to continue the grants-- to continue  
11 the programs that the grants supported, and the first  
12 scientist who phased out was Dr. Spencer Monroe.  
13 I think that that was maybe in '68 or '69, I can't re-  
14 member the specific date, whose work was primarily in  
15 cancer and was tangential to rehabilitation.

16 Q Are any of the personnel, professional personnel,  
17 who were involved in that grant still employed in the  
18 Department of Rehabilitation Medicine?

19 A Yes, Dr. Faro and Dr. June Barker. Some  
20 of the research scientists, no. I think two who were  
21 in the animal facility, as I read it, there are only four  
22 remaining, unless I am -- I am not familiar with the  
23 details of the technicians.

24 Q Did you have any conversation with Dr. Faro in  
25 or about this time about the termination of this project?

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1 mda

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2 A Yes. First I had a conversation with Dr.  
3 Windle and asked his advice as to what he thought the  
4 future of the program would be, and I said that I can't  
5 see how we could possibly finance it, and he said, "I  
6 don't see how you can either and I think it will have to  
7 be phased out.

8 Q Did you subsequently have a conversation with  
9 Dr. Faro?

10 A Yes, I did. She came to see me and was up-  
11 set that she would have to stop her research at a  
12 critical time.

13 MS. BLANK: May we have the time?

14 THE COURT: Can you tell us when this con-  
15 versation took place, approximately?

16 THE WITNESS: This was, I would say, some  
17 time in 1970. I can't be precise about the dates. I  
18 am not good at them. But it was around 1970.

19 A She pointed out that some of our monkeys were  
20 very valuable specimens of great scientific interest and  
21 needed to be followed through to see what the aging  
22 process did in the disabilities of these younger monkeys,  
23 and she said, "I'll do anything to keep this research  
24 project going." She said, "I have gone over to the  
25 Department of Anatomy and they have said that they will

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2 give me a teaching job there. I will cut my staff, I  
3 will work after hours. I will do anything I can to  
4 keep the project going."

5 I admired her tremendously and was very  
6 much impressed, and even though the times were very tough  
7 at that time, and still are moneywise, because that  
8 year, 1970, we faced our first and greatest deficit in  
9 the research program, a little over a quarter of a million  
10 dollars, but I said, "I am going to try to help you," and  
11 I went to friends and foundations, the first one being  
12 the New York Foundation, of which I am a member of the  
13 board and also chairman of the health committee. I  
14 told them that we had a fine and dedicated scientist who  
15 was in the middle of her research and this was her  
16 predicament, and asked for help.

17 They granted \$10,000 a year for two years.

18 I then went to the Beniceke Foundation, the  
19 Helena Rubinstein Foundation, the Kappa Kappa Gamma  
20 Research and Training Fund, which is an interesting one  
21 because that is a national women's sorority which had  
22 their hundredth anniversary two years ago. They had  
23 supported a program all over the United States in  
24 rehabilitation, giving fellowships and scholarships, but  
25 they had a special fund this particular year, and because

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2 I had worked with them through the years they asked if  
3 there was any special need, and I pointed out Dr. Faro's  
4 need and they made the largest grant I think they have  
5 ever made, \$35,000, which was a one-time grant.

6 Another grant of \$20,000 from the Hecksher Fund  
7 for Brain Damage, also headed by friends who knew the  
8 institute and knew the program.

9 A total in grants of \$170,000. And then in  
10 salaries that were picked up from general departmental  
11 funds, another \$29,000.

12 This was the money that supported Dr. Faro's  
13 research.

14 Q Did you also assist Dr. Faro in obtaining a  
15 temporary assignment with the Department of Cell Biology?

16 A When she told me of her interest I talked  
17 to them at the medical center and told them just what  
18 I have testified to, that this is a dedicated scientist  
19 and a fine person and if they could use her in the  
20 program, that I felt it would be splendid.

21 Q Reference has been made in this proceeding  
22 to certain of Dr. Faro's work being supported by RT-L funds  
23 and certain of her compensation coming from RT-1 funds.

24 A Yes.

25 Q Can you tell us what RT-1 is?

2 A RT-1 is Research and Training Fund made possible  
3 through the Office of Vocational Rehabilitation in  
4 Washington. The institute was the first fund when the  
5 program was established about 12 or 14 years ago.  
6 There are now some 25 medical centers that are supported.  
7 These are general lump sums given to medical schools  
8 to support research, training, and up to 25 per cent in  
9 patient service.

10 We have never used any of these moneys for  
11 the patient service at the institute, it's all gone  
12 into research and training, but they monitor the  
13 research each year and comment on the research because  
14 they want research supported that has to do primarily  
15 with rehabilitation, with disabilities, with artificial  
16 arms and legs and their development and basic research  
17 also in this field.

18 And after our report in 1968 we received a letter  
19 from Joseph Fenton, the chief of the Research and  
20 Training Centers Division --

21 Q I think that has been marked in evidence.

22 A It has been?

23 Q Yes.

24 A Well, what he said in this --

25 THE COURT: I will read it.

[150]

2 Q You don't have to go into that, Dr. Rusk,  
3 it is in evidence already.

4 A They knocked out 10 of the on-going research  
5 projects, and Dr. Faro's was one, because they said they  
6 did not feel that these were in point as far as rehabili-  
7 tation was concerned, so from that time on she could not  
8 be funded from the RT-1 program.

9 Q Was this an annual grant?

10 A Yes.

11 Q What kind of control does the government  
12 exercise over the use of the funds?

13 A Just that it has to be used for the things stipu-  
14 lated, research, training and patient care up to 25  
15 per cent, but they reserve the right to review the pro-  
16 grams and comment, as they did in this letter, as to ones  
17 they think are not in point.

18 Q Are you required to file annual reports con-  
19 cerning the use of this fund?

20 A We are.

21 Q Does that report also include other research  
22 activities that are not supported by RT-1 funding?

23 A As an appendix, really.

24 Q Is the research sponsored by this fund or the  
25 research funded by this RT-1 fund, sponsored research?

2 A Yes, sir.

3 Q Reference has been made to a letter you wrote  
4 to Dr. Faro, which is Plaintiff's Exhibit 4 in this  
5 proceeding. It is dated July 29, 1971. Can you  
6 tell the court the circumstances under which that letter  
7 was written?8 A Yes. In reevaluating our whole faculty I  
9 structur with a new policy or a review policy in New York  
10 University that the primary -- the primary -- I don't  
11 want to say job -- mission of a professor in the university  
12 is teaching and research is considered to be a secondary  
13 but necessary, part, and with the problems that were not  
14 only existing but ever-increasing in Washington of a  
15 diminution of funds available, it was felt that indi-  
16 viduals should be designated by the title which best fit  
17 them, and pure research, if it is research, and if it is  
18 pure teaching it should be so reflected in their  
19 appointment. And I think that the time Dr. Faro got  
20 this letter there were 11 individuals on the faculty at  
21 the same time who got the same letter.22 Q Dr. Rusk, I show you Defendant's Exhibit U for  
23 identification and ask you if those are the letters that  
24 you wrote at that time to other faculty members and the  
25 replies you received to that letter.

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2 A They are. I might say that these are  
3 distinguished senior people in the department.

4 MR. PORTH: I ask this exhibit, Defendant's  
5 Exhibit U for identification, 1 to 8, be received in  
6 evidence.

7 MS. BLANK: No objection.

8 (Defendant's Exhibits U-1 through U-8 were  
9 received in evidence.)

xx 10 Q Dr. Rusk, can you describe the procedure that  
11 is followed in the New York University School of Medicine  
12 with respect to recommendations for promotion in tenure?

13 A Yes. They generate within the department.  
14 Recommendations come from the chairman of the department  
15 and then there is a promotions committee within the de-  
16 partment made up of senior faculty members who discuss,  
17 approve or disapprove these recommendations. From  
18 there it goes to the medical center executive committee  
19 where it is reviewed by a special promotions committee  
20 and then it comes back for approval or disapproval by the  
21 subcommittee as a whole.

22 Q Does anyone other than the department chairman  
23 make such recommendations?

24 A No, sir.

25 Q Does the chairman make recommendations for pro-

1 mda Rusk-direct [154]

2 motions and/or tenure within his own department only  
3 or in any departments?

4 A Only his department.

5 Q Have you ever recommended Dr. Faro for pro-  
6 motion in tenure in the Department of Rehabilitation  
7 Medicine?

8 A No, sir.

9 Q Do you have any funds available to continue  
10 the employment of Dr. Faro in the Department of Rehabili-  
11 tation Medicine?

12 A No, sir. We have a half million dollar  
13 deficit in our research programs this year.

14 Q Dr. Faro's appointment letters in your depart-  
15 ment from 1965 right up through 1972-73 refer to  
16 appointment as instructor in the early years or assistant  
17 professor of experimental rehabilitation medicine.  
18 What's experimental rehabilitation medicine?

19 A Well, experimental and research are inter-  
20 changeable. That means that her assignment is in the  
21 research field.

22 Q So her appointment letters indicate that she  
23 is a research professor or instructor, is that correct?

24 A That is correct.

25 THE COURT: Dr. Rusk, some of your letters

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2 A Dr. Leonard Diller is a clinical psychologist,  
3 chief of the department, has now the rank of professor;  
4 is checked here as associate professor but I am sure he  
5 is full professor now, recently.

6 Q If you look at pages 104 to 106 of Exhibit  
7 8, does that booklet list Dr. Gertler's name?

8 A Yes.

9 Q Will you tell us the significance?

10 A Bernard M. Gertler, advanced epidemiology of  
11 cardiovascular disease; is that what you want?

12 Q I am asking what the significance of having  
13 his name listed in that book is.

14 A I am sorry, it is difficult for me to hear  
15 you.

16 Q I am sorry. Could you tell me what it means  
17 that Dr. Gertler has his name listed in that book? What  
18 is the significance of Dr. Gertler having his name in  
19 that book?

20 A I think since the title is sponsored research  
21 and training at New York University, that this is one of  
22 the projects that is sponsored in the training program.

23 Q So we are to assume that since Dr. Gertler's  
24 name is listed in that book he is doing research and he  
25 does have certain grants to do such research, is that cor-

1 mda Rusk-cross [160]

2 rect?

3 A That's right. He has a number of grants  
4 and he -- may I say what else he does?

5 Q I think we will just stick to the research  
6 just now and we will get into that later.

7 Could you also find Dr. Goodgold's name  
8 in Exhibit 8?

9 A That's right.

10 Q And Dr. Bergofsky?

11 A That's right.

12 Q And Dr. Diller?

13 A That's right.

14 Q They all do research and they all have  
15 grants, is that correct?

16 A That's correct.

17 Q Is Dr. Faro also listed as the recipient of  
18 such grants in Plaintiff's Exhibit 8?

19 A You say Dr. Faro?

20 Q Can you find her name?

21 A You want to verify her listing?

22 Q Yes.

23 A What page is that on, do you know?

24 Q I believe if you look on page 104 to 106, around  
25 that same area. [160]

2 mittee and then we all talk together.

3 Q Referring to Exhibit 9, Dr. Donald Kovalt,  
4 could you tell me how he divides his time between teach-  
5 ing and research?

6 A That is very easy. I would say that he divides  
7 his time about 50-50 between patient services, the rest  
8 in teaching of residents, of paramedical personnel,  
9 demonstrations and lectures for medical students.

10 Q So you are saying he spends half of his time  
11 teaching and half of his time taking care of patients?

12 A That's right, of which teaching is a part,  
13 because that's the way residents learn.

14 Q Dr. Gertler? Could you tell me how he  
15 divides his time?

16 A I would say Dr. Gertler is about 40 to 50  
17 per cent research, 20 to 25 per cent teaching with students  
18 in the laboratory, with residents, fellows, seminars,  
19 teaching in the international program in cardiology, and  
20 I would say about 20 per cent in patient care, which is  
21 an integrated part of the total clinical research pro-  
22 gram.

23 Q Could you give us that same type of breakdown  
24 for Dr. Goodgold, Joseph Goodgold?

25 A I would say Dr. Goodgold -- these would have

2 to be rough estimates, you realize.

3 Q I understand that, of course.

4 A I would say one-third research, something  
5 over a third -- no, a third in teaching, 10 per cent  
6 in patient service, because he reads all the electromyo-  
7 grams, and 15 per cent in research and training administra-  
8 tion, because he is head of that department.

9 Q What does Dr. Goodgold teach?

10 A He teaches -- he is known as one of the  
11 greatest teachers of electromylography in this country.  
12 He also teaches the problems of -- I mean the role of elec-  
13 tronics in medicine, as well as in the whole field of neuro-  
14 muscular diseases.

15 He has just been made a director of research  
16 under a new grant we got from the Muscular Dystrophy Asso-  
17 ciation, and that is also a part of his teaching and  
18 research responsibility.

19 Q Dr. Albert Haas?

20 A Dr. Albert Haas specializes in respiratory  
21 physiology and pulmonary diseases; chronic bronchitis,  
22 asthma, emphysema. He is director of the program  
23 at Bellevue and also at the institute, and also director  
24 of the medical service at the University Hospital, that  
25 he spends 30 per cent of his time in research and another

2 10 to 15 per cent in teaching and the rest in supervis-  
3 ing of patient services, testing, and so forth.

4 Q Dr. Loman.

5 THE COURT: Counsel, according to the  
6 testimony by the plaintiff there are some 400-odd physi-  
7 cians. Do you intend to go through them all?

8 MS. BLANK: No, I would intend to go  
9 through those people who have tenure.

10 THE COURT: Even with the number of people  
11 with tenure --

12 THE WITNESS: I will try to be very concise,  
13 your Honor. May I ask you this question. --

14 THE COURT: It is getting on towards  
15 5:30. Eventually we have to get out of here. What  
16 is the next doctor?

17 A He is chief of professional services.

18 Q Just give us the percentages, please.

19 THE COURT: How much time in research?

20 THE WITNESS: Does he give?

21 THE COURT: Yes.

22 THE WITNESS: One hundred per cent. But  
23 that is divided between patient services, I would say 25  
24 per cent, teaching another 30, participation in clinical  
25 research another 30, and the rest, that is administration

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2      and other duties.

3      Q      Did I misunderstand?      Did you say 100  
4      per cent research?

5      A      No, I did not.      I said 25 per cent in patient  
6      services, 25, 30, 35 per cent in teaching of residents  
7      and students, paramedical personnel, and the rest of the  
8      time, 15 or 20 per cent in the supervision of research.

9      He has four or five projects that are under his direct  
10     supervision.

11     Q      Dr. Swinyard?

12     A      Swinyard is a pediatrician.      I would say  
13     that 80 per cent of his time is in -- no, I would say  
14     that his time is about 60 per cent research and 40 per  
15     cent teaching.

16     Q      Dr. Rosenbluth?

17     A      Dr. Rosenbluth is, I would say, maybe 85 per  
18     cent of his time in research and 15 per cent is in  
19     teaching, but of a highly stratified teaching respon-  
20     sibility, that he organizes all of our research seminars,  
21     he conducts them, he brings in visiting scientists, and  
22     he is a coordinator of this whole upper level of research  
23     activity.

24     Q      Let's skip down to the associate profes-  
25     sors, Arthur Eberstein.

1 mda

Rusk-cross

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2 A I would say that Eberstein is 30-30-30.

3 Q Nancy Kester?

4 A Who?

5 Q Nancy Kester.

6 A She is 30 per cent teaching, 50 per cent  
7 patient care and 20 per cent in clinical research.

8 Q Does Dr. Eberstein have tenure?

9 A Does he have tenure? I would have to look  
10 up his rank.

11 Q He is an associate professor.

12 A I don't think he does. We have a rather  
13 large department and a rather far-flung program and it  
14 is difficult for me to -- I am not sure.

15 Q You are not sure whether he has tenure?

16 A No. What is his rank. If you can give  
17 me the other book I can look it up for you and  
18 tell you in a minute.

19 Q He is an associate professor.

20 A Then he has tenure. Yes, he has tenure.

21 Q Is it true that all associate professors  
22 have tenure?

23 A No.

24 Q Dr. Kester, does she have tenure?

25 A Dr. Kester has tenure.

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2 Q Dr. Matthew Lee?

3 A Dr. Matthew Lee is director of the program  
4 at Goldwater. I would say that 20 per cent admini-  
5 stration, 30 per cent teaching, 20 per cent patient  
6 care and the rest research.

7 Q Does he have tenure?

8 A He has tenure.

9 Q And Dr. John Sarnow?

10 A Twenty per cent patient care, 30 per cent  
11 teaching and -- no, he is about 30-30-30.12 Q Could you tell us how much time Dr. Leonard  
13 Diller spends on teaching?

14 A On teaching?

15 Q Yes. Or give us a comparative.

16 A I would say 30 to 40 per cent minimum.

17 If I had known you wanted this material I  
18 could give you much more --

19 Q I understand these are approximations.

20 Are you familiar with Dr. Eric Naftschia?

21 A Yes, I am.

22 Q Could you tell me what rank he is listed?

23 A Associate professor of research experimental.

24 Q I think he is listed here as an assistant.

25 He has been promoted since that catalog came out?

2 A Yes.

3 Q Does he teach?

4 A But he is now not in the Department of  
5 Pharmacology but in the Department of Rehabilitation  
6 Medicine because he is doing research directly in point  
7 with spinal cord injury.

8 Q Does he teach?

9 A He does teach. I would say a minimum of his  
10 time in teaching is 10 or 15 per cent, possibly.  
11 Possibly not more than 10 per cent.

12 Q Does Dr. Naftchi have tenure?

13 A He does.

14 Q In your opinion is a teaching load of three  
15 and a half to four days a week, including preparation time --  
16 would that be sufficient for a tenured appointment in  
17 the Department of Rehabilitation Medicine?

18 MR. PORTH: Objection. I don't think any  
19 foundation has been laid.

20 A Not alone.

21 MR. PORTH: Wait a minute. There hasn't  
22 been any foundation laid for it. There is no testimony  
23 that anybody has performed these services that would  
24 justify the granting of a promotion in tenure.

25 THE COURT: I will permit the question.

2 Go ahead. Answer the question, Dr. Rusk.

3 (Question read.)

4 A If the individual had the aualifications  
5 and was teaching in the areas of rehabilitation medi-  
6 cine, of which there are many that were needed and wanted  
7 and could be financed, sure.

8 Q That would be enough.

9 A Yes.

10 Q Just let me relate this now to the percentages  
11 that you have given us for various faculty members. Are  
12 there any male members of the faculty that we have gone  
13 through who teach that much, three and a half to four  
14 days a week?

15 THE COURT: That is an impossible ques-  
16 tion.

17 A Well, I --

18 THE COURT: Wait a second. You have  
19 rattled off approximately 15, maybe 18 names, and then  
20 you say what do these 15 to 18 people -- first you  
21 asked three and a half to four hours, then you changed  
22 it to three and a half to four days, and I am not  
23 terribly sure where this whole thing is going.

24 MS. BLANK: My original question was three  
25 and a half to four days, your Honor.

2 THE COURT: All right.

3 MS. BLANK: I hope that was clear.

4 THE COURT: You said hours; at least that's  
5 the way I heard it.

6 Now, Doctor, in determining persons as you  
7 gave them before, what kind of a week were you talking  
8 about, a 40-hour week, a 50-hour week or a 60-hour week?

9 THE WITNESS: About the various teachers?

10 THE COURT: Yes.

11 THE WITNESS: I suspect that -- this is  
12 hopefully an educated guess -- that I am talking about  
13 a 50-hour week.

14 THE COURT: All right.

15 MS. BLANK: I will work out the math my-  
16 self.

17 BY MS. BLANK:

18 Q Do you teach at all yourself, Dr. Rusk?

19 A I used to teach a great deal, but I have been  
20 at this a long time. I give lectures to the freshman  
21 class, and hold some seminars, but my teaching is most  
22 interesting but minimal. I would say not more than  
23 5 per cent of my time.

24 MS. BLANK: I have no further questions.

25 MR. POTH: No questions, your Honor.

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1 W3

Goodgold-direct

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2 Research and Training?

3 A Yes, I did.

4 Q Can you tell us when Doctor Windle's grants  
5 from the Department of Health, Education & Welfare, copies  
6 of which have been introduced as Defendant's Exhibits F,  
7 G and H, terminated, what happened with the professional  
8 personnel who were engaged in that research program?

9 A Well, in conversations with Doctor Windle and  
10 Doctor Rusk, it was decided that the work that Doctor  
11 Windle did and the group he brought with him would be phased  
12 out of operation in the Department, so that many of the  
13 people who came with Doctor Windle left.

14 BY THE COURT:

15 Q Doctor Goodgold, when you say that they left,  
16 were they terminated?

17 A Well, many of them --

18 Q Or about to be terminated?

19 A Many of them were highly technically trained  
20 individuals and they were terminated. Others eventually  
21 found other positions.

22 THE COURT: All right.

23 BY MR. PORTH:

24 Q When did you first have any discussions with  
25 Doctor Faro or in connection with Doctor Faro in the

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

2           A    Well, my first move was to bring this matter to  
3           the attention of Doctor Rusk, who is the Chairman and Pro-  
4           fessor of our Department, and supported Doctor Faro's as-  
5           pirations to continue in some capacity in the Department  
6           so that she could continue her work.

7           Q    Does the Department of Rehabilitation Medicine  
8           have any control over the employment of any other personnel  
9           in any other department in the medical school?

10          A    No, we do not.

11          Q    Did you ever write a letter for Doctor Faro  
12           recommending that she be promoted to an associate professor  
13           with tenure?

14          A    No, I did not.

15          Q    Did you ever write any such letter recommending  
16           promotion and tenure either in the Department of Rehabilita-  
17           tion Medicine or any other department?

18          A    No, I did not.

19          Q    Doctor Faro refers in her affidavit and in her  
20           testimony to a meeting with you in late August or early  
21           September, 1971, following the receipt of a letter of  
22           Doctor Rusk's dated July 29, 1971, which is Plaintiff's  
23           Exhibit 4.   Do you recall such a meeting?

24          A    Yes, I do.

25          Q    Can you tell us what you said and what Doctor

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2 Faro said at that meeting.

3 A Well, I think that Doctor Faro told me that  
4 she didn't understand the implication of this letter,  
5 that she wanted me to explain just what it meant.

6 Q Did you explain it to her?

7 A Yes, I did.

8 Q What did you tell her?

9 A I told her, to the best of my recollection, that  
10 this is a letter that went out to a number of other members  
11 in the department -- I think approximately ten members of  
12 the Department of Rehabilitation Medicine -- and this fol-  
13 lowed notification from the administration that we would  
14 be requested to send such letters to members of the depart-  
15 ment, and that this letter was notification that the de-  
16 partment, Doctor Rusk, did not feel that he could retain  
17 her on the train of tenured appointment, and that he in-  
18 stead offered her a continuation on the faculty as a part-  
19 time nontenured member, but included an offer for her to  
20 remain as a member of the staff of the Institute of Rehab-  
21 ilitation Medicine, the hospital which is concerned with  
22 the department, and in this capacity as a staff member she  
23 would retain all other fringe benefits and privileges ex-  
24 cept the tenure.

25 This was the explanation that was pertinent to

2 Q Tell us what the memorandum was that you refer  
3 to.

4 A Yes, I have a copy of it.

5 Q What is the date of it?

6 (Pause.)

7 Q Well, let me show you this and ask you whether  
8 that is a copy of a memorandum, which has been marked  
9 Defendant's Exhibit <sup>V</sup> ~~1~~ for identification?

10 A Yes, that's it. <sup>V</sup>

11 MR. PORTH: I ask that ~~1~~ for identification  
12 be received in evidence.

13 MS. STANLEY: I have no objection, your Honor.

14 THE COURT: Received. <sup>V</sup>

15 (Defendant's Exhibit ~~1~~ received in evidence.)

16 Q Did you ever show that memorandum to Doctor  
17 Faro?

18 A I think I did. This memorandum was drafted  
19 by me for Doctor Rusk's signature and it follows conversa-  
20 tions with Doctor Faro where she shows interest of moving  
21 from the Department of Rehabilitation Medicine to the  
22 Department of Cell Biology. <sup>V</sup>

23 I discussed this matter with Doctor Rusk and  
24 then drafted this memorandum addressed to the Dean of the  
25 School, suggesting that the administration consider such

1 - wll

Goodgold-direct

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2 to sign the letter of response, and the conversation, as I  
3 recall it, concerned the fact that signature was not re-  
4 quired, and that I had ascertained from administration that  
5 the original letter telling her about change of title with  
6 an offer for staff position was quite sufficient, and that  
7 it was not necessary for her to sign any letter of response.

8 Q She also says that you told her that Doctor  
9 Rusk did not wish "to promote me to the rank of associate  
10 professor for reasons of financial exigency." Did you  
11 ever make such a statement to her?

12 A I may have because essentially that is a sub-  
13 stantial factor.

14 Q And she also says that "you told me you would  
15 see Doctor Bennett" to try to make other arrangements on  
16 her behalf. Did you ever have such a conversation with  
17 her?

18 A I doubt that because I haven't seen Doctor  
19 Bennett on any of these matters, because it is not my  
20 prerogative to discuss any of these things with him; I'm  
21 not chairman of the department.

22 Q Doctor Faro also refers to a meeting with you  
23 on May 11, 1973, which she refers to as being summoned to  
24 your office. Do you recall such a meeting with her?

25 A No, sir.

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1 w13 Goodgold-direct

2 Q May I ask who did prepare it?

3                   A        The young lady in charge of personnel for the  
4                   Institute.

5 Q And on what data was it based?

6                   A        It was based on the current list of faculty  
7                   members.

8 Q As of what date?

9 A As of two days ago.

10 Q As of two days ago?

11 A Yes.

12 MS.BLANK: My problem with this, your Honor,  
13 is that I believe this contradicts the testimnny given  
14 at the last hearing and today. Again we have a problem  
15 with a name being missing from this list. That is the  
16 name of Doctor Naftchin.

17 THE WITNESS: He doesn't have --

18 MS.BLANK: Doctor Rusk testified at the last  
19 hearing that he did have tenure.

20 THE WITNESS: He may have testified that he  
21 was in the chain of tenure but he does not have tenure.

22 MR. PORTH: Doctor Rusk testified that he thought  
23 he had tenure, but he had indicated to your Honor if he  
24 knew you wanted this information he would have checked on  
25 it. That is one of the reasons he checked on it.

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1 w 17 Goodgold-cross [191]  
2 from Doctor Rusk, it is quite obvious that Doctor Bennett  
3 did not want to make any presumptive appointments without  
4 the advice and consent of Doctor Sabatini who was coming  
5 in as a new chairman.  
6 Q Let me ask you just a few brief questions about  
7 other members of the Department of Rehabilitation Medicine.  
8 First, yourself. Over the years that you have  
9 been in the Department of Rehabilitation Medicine have you  
10 ever done research on any individual governmental or private  
11 projects?  
12 A Yes, I have.  
13 Q And was any portion of your salary at any time  
14 ever paid by such a grant?  
15 A Yes.  
16 Q For how long a period?  
17 A I would say that I have brought in my own sup-  
18 port for most of my time at the school.  
19 Q So that most of your salary for most of the  
20 period that you have been in the Department of Rehabilitation  
21 Medicine was paid from individual grants that you secured?  
22 A Most of the time. There were some periods when  
23 I was in between grants.  
24 Q And you are a tenured professor?  
25 A Yes, I am. [191]

2           Q     I would like the same information for a few  
3     people.     Doctor Eric Naftchi, has he ever done research  
4     on individual grants?

5           A     I believe he has.

6           Q     Was he ever paid from such grants?

7           A     I believe he was.

8           Q     Is he still being paid from such grants?

9           A     Well, I'm not in charge of the finances of the  
10    department but I would say he probably is receiving some  
11    funds from the grants.

12          Q     How about Doctor Gerter, has he ever received  
13    and is he now receiving individual research funds from  
14    grants?

15          A     I believe he is also.

16          Q     So that part of his salary now and quite a few  
17    of his salaries in the past have been paid out of the funds  
18    of such grants?

19          A     That is correct.

20          Q     Doctor Diller also?

21          A     Correct.

22          Q     Doctor Bergofsky?

23          A     I believe it applies to Doctor Bergofsky as well.

24          Q     How about Doctor Arthur Eberstein?

25          A     The same.

[192]

1 w19

Goodgold-cross

[193]

2 Q Doctor Arthur Eberstein, is he a professor with  
3 tenure?

4 A He is.

5 Q When did Doctor Eberstein receive tenure?

6 A My educated guess is within the last two years.

7 The list not admitted in evidence will give you the date  
8 of his tenure.

9 Q As to the payment of the Medical School faculty,  
10 in fact, isn't it the common practice for medical schools  
11 to pay its faculties from a variety of sources, that is,  
12 that all faculty members of medical schools you pay from  
13 grant funds that are available and you pay from other funds  
14 of the university when grant funds are not available?

15 A I think it's a universal fact of life in all  
16 the medical schools.

17 Q And in your medical school as well?

18 A Correct.

19 Q I would now like to get to the question very  
20 briefly about teaching at the medical center. Can you  
21 tell me about what percentage of the total time Doctor  
22 Eric Naftchi teaches at the medical center in the depart-  
23 ment?

24 A It is very difficult for me to estimate with  
25 any degree of accuracy. A guess would be about 25 to 35%.

[193]

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1                   w20                   Goodgold-cross                   [194]  
2                   Q     All right. Now, what do you mean by teach,  
3     teaching a course?  
4                   A     Well, teaching involves more than formal course  
5     work.  
6                   Q     He does not teach a course?  
7                   A     He does not teach a formal course; not to my  
8     knowledge.  
9                   Q     What does constitute teaching?  
10                  A     Teaching is concerned with residents and resi-  
11     dent training programs, medical students, and the personnel  
12     who are engaged in various work related to the Department  
13     of Rehabilitation Medicine.  
14                  Q     Can you describe to me in terms of how Doctor  
15     Naftchi spends his time, how he spends his days, in what  
16     way he teaches?  
17                  A     His teaching is mainly in conferences and in  
18     seminars.  
19                  Q     Are conferences individual appointments that  
20     individual students might make with Doctor Naftchi? Is  
21     that what the term "conference" means?  
22                  A     No, I think that conferences is something that  
23     goes on all day long in an academic institution, in a  
24     medical institution primarily.  
25                  Q     Well, my question is --

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2                   A     The contact with medical students, the residents,  
3     the ancillary personnel who are concerned with research,  
4     care of patients and teaching programs. This is an ongoing  
5     event all day long.

6                   Q     So that a conference is any contact that a member  
7     of the faculty might have?

8                   A     No, not necessarily, there are formal conferences  
9     as well.

10                  Q     So when you use the term "conference," at least  
11     part of what you mean by that is any contact, even informal  
12     contact a professor might have with a medical school student  
13     during the course of a day?

14                  A     Certainly the informal is expected as part of  
15     the teaching environment.

16                  Q     It may be expected as part of the teaching en-  
17     vironment, but I am simply trying to establish whether or  
18     not medical students make appointments to see Doctor  
19     Naftchi.

20                  A     I doubt that very much. I see medical students  
21     every day, I don't see them by appointment.

22                  Q     So just to summarize it, is it accurate to say  
23     that when you use the words "conferences with students,"  
24     ~~is~~ the day to day contacts that students would have with  
25     members of the faculty?

1 w22

Goodgold-cross

[196]

2 A And more formalized; some students are directly  
3 assigned to work in his department with him, specifically  
4 assigned.

5 Q All right, fine. How much of that kind of  
6 thing does Doctor Naftchi do?

7 A How would you like me to break it down?

8 Q Well, for example, can you tell me if Doctor  
9 Naftchi --

10 A How many boys or girls are working with him?

11 Q Yes.

12 A I say it may range from two to four.

13 Q No, what I'm interested in is time. How many  
14 times a week do you think Doctor Naftchi makes formal  
15 appointments with some of his students about some aspect  
16 of teaching?

17 A I can't answer that question because --

18 MR. PORCH: If your Honor please, I realize  
19 this is cross examination but to ask the witness what he  
20 thinks, I think is improper cross examination.

21 MS. BLANK: Well, your Honor --

22 THE COURT: He said he doesn't know.

23 MS. BLANK: I actually am frustrated by that  
24 response, your Honor, because if this witness, who is one  
25 of the supervisory people in this particular department

[196]

1 w23

Goodgold-cross

[197]

2 at the university, can't answer that question, who can?

3 BY THE COURT:

4 Q Can you answer it, Doctor?

5 A Your Honor, I can answer the question in this  
6 context: People in this department like Doctor Naftchi  
7 are independent investigators, all of whom are supposed  
8 to be competent of doing individualized work. This is  
9 not a factory where responsibility of the administration  
10 is to be a foreman and check on items of productivity and  
11 output and what he's doing every moment of the time, what  
12 times does he arrive and what time does he leave, to what  
13 does he say. This is not what is done. He is independent.  
14 He arranges his time. He does what he has to do, and his  
15 performance is based on what he is to perform.

16 BY MS. BLANK:

17 Q All right. Is this an accurate statement, that  
18 Doctor Naftchi does not have formal teaching responsibilities  
19 in the sense that he does not set up as a regular basis  
20 every week the time that he is to teach?

21 A That is correct.

22 Q Let me ask you again. I presume you reiterate  
23 your statement that Doctor Naftchi does not in effect have  
24 tenure. What is his present faculty rank?

25 A I believe he is an associate professor.

[197]

2 Q And you do not agree with Doctor Rusk's testimony that most associate professors if not all associate professors do have tenure?

3 A Well, the statement that most of them do have  
4 is correct, but the connotation that the position of as-  
5 sociate professor implies that you have tenure immediately  
6 is incorrect. I was associate professor for five years  
7 before I was tenured.

8 Q All right. And you know as an absolute fact  
9 that Doctor Naftchi as an associate professor still doesn't  
10 have tenure?

11 A I know it is an absolute fact.

12 Q All right, one last question about this. Can  
13 you tell me if Doctor Eberstein teaches?

14 A Yes, I can give you lots of information about  
15 Doctor Eberstein because I work with him every day.

16 Q All right. Does he teach a course?

17 A Formal lecture course? He participates in  
18 courses.

19 Q What is the course that he participates in?

20 A He participates in several courses. First of  
21 all, we have a rotation of new residents every three or  
22 six months. Every morning between the hours of eight and  
23 nine-thirty they are involved in formal presentation of

1        w 25

Goodgold-cross

[199]

2        the information that they are supposed to be learning.

3              Doctor Eberstein participates in that training.

4              Doctor Eberstein participates in a post-graduate  
5        course presented annually.

6        Q        All right. Coming back to the training of the  
7        residents in the mornings, when you say that Doctor Eber-  
8        stein participates, can you be more specific about what  
9        you are talking about? Does he meet with groups of resi-  
10      dents in the mornings?

11      A        He meets with -- the residents are met with  
12      every morning. The members of the department who are in-  
13      volved in teaching the subject matter that pertains to  
14      that particular section of the medical school meet with  
15      the residents.

16      He meets with them on the occasion when the in-  
17      formation that he is an expert in is to be presented. So  
18      he doesn't meet with them every morning; he is assigned  
19      and called on to lecture on his area of expertise.

20      Q        That lecture, is that --

21      A        Actually lecture. Well, there is a half  
22      dozen students and there is a formal presentation with  
23      the provision that any student can break into it at any  
24      time, so it is formal and quasi formal.

25      Q        Doctor Goodgold, would you be good enough to

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bear with me because I am not a medical doctor.

A Oh, I would be delighted to.

Q We have a group of residents, we have six resident students.

A Yes.

Q A resident normally learns by participating in the tasks of the medical center, I presume, a house resident?

A Residents learn by various methods, including some by lectures.

Q All right. On what kind of occasion would a resident or a group of these six or seven residents find it necessary to go to Doctor Eberstein? A question might come up and a group would come up to Doctor Eberstein's office and might engage in a question and answer session; is that what you mean?

A No, that is not it at all. These are formalized meetings every morning.

Q Every morning, at a fixed hour in the morning, Doctor Eberstein meets with student residents for a lecture session; is that what you mean?

A No, I didn't say that. I said this is a formal series of lectures and he is one of the participants on certain mornings.

1        w 27

Goodgold-cross

[201]

2                    For example, if I'm the lecturer on Monday,  
3                    Doctor Eberstein doesn't have to come there because I'm  
4                    giving the program.    If it's his subject matter on Tues-  
5                    day, then it's his responsibility.

6                    Q        All right.    Can you tell me, Doctor, how often  
7                    during the course of a semester Doctor Eberstein might  
8                    have any responsibility for giving such a lecture to student  
9                    residents?

10                  A        We have a rotation every three months and he is  
11                  responsible to give a certain portion of the lectures every  
12                  three months.

13                  Q        What portion, roughly?    One-third?

14                  A        I couldn't say.

15                  Q        Two-thirds?

16                  A        I don't know offhand.

17                  Q        How many other persons are also involved in  
18                  teaching residents?

19                  A        In this particular area, two or three.

20                  Q        Does Doctor Eberstein do any other teaching?

21                  A        Yes, Doctor Eberstein is a participant in the  
22                  post-graduate education program.

23                  Q        What does that mean?

24                  A        The Department of Rehabilitation Medicine pre-  
25                  sents approximately five or six teaching programs for

[201]

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2 here and listened to this so-called cross examination --

3 THE COURT: I will take it.

4 MR. PORTH: I respectfully object to what is  
5 being done here because this is not cross examination.  
6 I don't recall that I asked on direct anything in the  
7 area that has been covered in the last fifteen or twenty  
8 minutes.

9 THE COURT: Overruled. Go ahead.

10 BY MS. BLANK:

11 Q Doctor Goodgold, can you describe briefly what  
12 Doctor Eberstein's participation is during the teaching  
13 of this course, that he participates in teaching this  
14 three to five day course twice a year?

15 A He covers at least one-third of the time of  
16 the total program.

17 Q Meaning that he lectures?

18 A Lectures and demonstrates. There are demon-  
19 strations during the program.

20 Q I see. Are the demonstrations using cadavers  
21 or living persons?

22 A No, he does not work with cadavers.

23 Q Well, what type of demonstrations, so we have  
24 an idea?

25 A The utilization of sophisticated electronic

1      w 32

Goodgold- recross [206]

2      Faro ever had any teaching activities of any kind in the  
3      Department of Rehabilitation Medicine?

4      A      No, I'm not familiar with that.

5      Q      You don't know?

6      A      She had no specific teaching activities in the  
7      Department of Rehabilitation Medicine that I know of.

8      MR. PORTH:    That is all.

9      RECROSS EXAMINATION

10     BY MS. BLANK:

11     Q      When you said that Doctor Faro to your know-  
12     ledge did not have teaching duties in the Department of  
13     Rehabilitation Medicine, what do you mean by teaching?

14     A      Lectures, that I know of.    I don't know what  
15     her specific activities were in the laboratory.

16     Q      Doctor Faro had no formal lectures; did she  
17     have formal conferences with students?

18     A      I have no recollection.    I don't know.

19     Q      Do you know whether or not she had informal  
20     conferences with students?

21     A      I have no information about that.

22     MS. BLANK:    No further questions.

23     BY THE COURT:

24     Q      Doctor Goodgold, you stated that you did not  
25     write a letter making a recommendation concerning Doctor

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE  
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

2 what teaching experience she had?

3 A As I recall, she had very little, I think.

4 Q Had she been doing any teaching in the Depart-  
5 ment of Rehabilitation Medicine?

6 A No.

7 Q Did you have any discussion with her at that  
8 time about this position in cell biology, what the nature  
9 of the position was?

10 A The discussion was not about an open position  
11 in cell biology; it was about an assignment to participate  
12 in a program. There was no question of an appointment  
13 in the department at that time.

14 Q What if anything did you do as a result of this  
15 conversation?

16 A Well, as I said, I discussed the possibilities  
17 with Doctors Prutkin and Ross, and we agreed to meet with  
18 Doctor Faro and explore the chances of employing her and  
19 using her abilities in the program.

20 Q And do you know whether they did meet?

21 A Yes, they did meet.

22 Q Did you have any further discussion with Doctor  
23 Faro prior to the time she started on her teaching?

24 A Well, in that same discussion we also touched  
25 upon the possibility of her participating in our course

2 the services of the faculty, of the anatomy faculty from  
3 another school, which is very unusual.

4 I may say we were able to do this and find the  
5 funds to do it because of a surplus in the budget in the  
6 Department of Cell Biology.

7 Just to wind this up, I would like to say that  
8 we administratively used this opportunity to solve two prob-  
9 lems at once. We tried to use some of that surplus to  
10 take care of the enlisted guest faculty, and the use of a  
11 small part of it to take care of Doctor Faro's salary.

12 Q Now, this was a temporary situation that existed  
13 at this particular time, is that correct?

14 A That's correct.

15 Q Did you have any discussion with Doctor Faro  
16 about the temporary nature of this appointment?

17 A Yes. All of these arrangements were made on  
18 the basis that they were interim measures to carry her over  
19 as far as her personal salary, of course, was concerned, to  
20 enable her either to wind up her research or to find a new  
21 position in another school, or to gain outside support for  
22 her salary and research, such as from the National Institute  
23 of Health, or to develop a career, if you like, in another  
24 department, such as cell biology.

25 So we felt we made all of these available options

1 w 46

Potter-direct

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2 specifically for the purpose of teaching and the compensa-  
3 tion was negotiated and agreed upon between the teachers  
4 of this department.

5 This is a continuation of what Doctor Faro's  
6 salary had been in the Department of Rehabilitation Medi-  
7 cine, and is still being paid through that department in  
8 fact. And all we were doing there was an administrative  
9 manipulation to provide her salary from some other funding  
10 source. In this particular instance it was the general  
11 research support grant.

12 Q The RT-1 fund?

13 A No, the general research support grant is an  
14 award made by the Institute of General Medical Scientists  
15 of the National Institute of Health to schools of medicine  
16 and other research institutions, for the purpose of providing  
17 central facilities, initiating new research projects,  
18 and sustaining research projects which have run into any  
19 kind of financial hardship, or sustaining faculties who are  
20 doing research. It's a research support fund.

21 Q All right. This did not represent any sort  
22 of grade; this was basically her basic annual salary.

23 A The whole purpose there was to maintain her  
24 basic salary, her basic annual salary.

25 Q I have one other question. Listed under course

[220]

- 98 -

A That he had been primarily responsible for teaching courses on anatomy.

Q How old a man is Doctor Schaflan, do you know?

A I don't know.

Q Isn't it true that he just recently graduated and he was a student teaching the course?

MR. PORTH: Might I suggest that you permit him to refresh his recollection from the exhibit.

Q Let me direct your attention to Defendant's Exhibit D. Does that refresh your recollection as to what Doctor Schaflan's experience was?

A Yes, this is what Doctor Sabatini showed me in our discussion, and it does bring out that not only that he did receive some teaching awards and he had also published material on anatomy particularly, and was preparing a manual course.

Q This is a rather abbreviated resume, is it not?

A It is, yes.

Q I mean it lists, for example, two publications that Doctor Schaflan was involved in, is that correct?

A Yes.

Q It lists under courses taught, it says medical gross anatomy, gross comparative anatomy; is that correct?

A That's correct.

2 Q There is no way that you could tell from looking  
3 at this resume exactly how many courses he taught?

4 A No, I cannot from this.

5 Q And yet you felt that you were satisfied that  
6 Doctor Schaflan had satisfied the requirements?

7 A Well, on the basis of this plus what Doctor Saba-  
8 tini told me.

9 THE COURT: I am sorry, Doctor, I can't hear you.

10 A On the basis of this document, plus what Doctor  
11 Sabatini told me about him.

12 Q Which you now cannot recall?

13 A It was a very short interview.

14 Q To your knowledge, was Doctor Faro ever consid-  
15 ered for either Doctor Alves's or Doctor Schaflan's job?

16 A No, because Doctor Faro's appointments were  
17 somewhat parallel with unrelated problems. We were con-  
18 cerned with finding ways and means to maintain Doctor  
19 Faro's salary support. We used the opportunity of a  
20 shortage of staff in anatomy to give her a chance to try  
21 out that as a possible new direction in her academic career,  
22 and if that turned out well, that was fine. But all we did  
23 was to set up this opportunity for this kind of explora-  
24 tion.

25 Q My question to you, Doctor Potter, is why didn't

2 this work out well? Was there any criticism of Doctor  
3 Faro's work?

4 A I would not say it was not so much that there  
5 was any criticism of Doctor Faro's work. I have not had  
6 any such thing. But I just think that there is a very  
7 obvious difference between the kind and level of what Doc-  
8 tor Alves was doing as compared with what Doctor Faro was  
9 doing.

10 Q Even if that is true, would you also think  
11 there is a very obvious difference between the kind of  
12 work that Doctor Faro was doing as compared with the work  
13 that Doctor Schaflan was doing?

14 A Well, I don't know personally, but Doctor Schaf-  
15 lan was had or brought on specifically for the purpose of  
16 filling in or sustaining the initiative that Doctor Alves  
17 made.

18 Q Is it fair to say that Doctor Faro was never  
19 considered for promotion with tenure in any department in  
20 the Medical School; is that correct?

21 A She was not recommended for promotion or tenure.  
22 I'm sure that each department chairman has a responsibility  
23 of reviewing his faculty, and considering those who should  
24 be promoted and those who should not be promoted.

25 Q You testified on direct examination, Doctor

1 w 77

2 Potter-cross

3 restricted purpose funds -- and officially these are the  
4 funds which generally, in the main, are provided by depart-  
5 ments in the Federal Government, and to a less extent by  
6 city, state and private agencies, for the support of re-  
7 search, and this is sponsored research.

8 These restricted purpose funds are so-called  
9 because they can only be spent in support of such activities.  
10 They are a very important source of support for our other  
11 programs, quite legitimately, because the federal govern-  
12 ment and other agencies do give us the freedom to use some-  
13 thing like twenty per cent of effort - and I emphasize  
14 effort and not time - of any individual who is supported  
15 as a principal investigator, from restricted funds, we can  
16 use up to twenty per cent of his efforts for other activities  
17 including teaching.

18 Q So that these special funds are extremely impor-  
19 tant to the Medical School, is that correct?

20 A That's correct.

21 Q Is the RT-1 fund considered a special fund?

22 A Yes, these are research training funds.

23 Q Does New York University conduct a vigorous  
24 recruiting program for women?

25 A We do not conduct a vigorous recruiting program  
for faculty of any kind. Most of the spots in the faculty

WASHINGTON SQUARE  
NEW YORK, N.Y. 10003

OFFICE OF THE VICE PRESIDENT  
AND SECRETARY

May 10, 1965

Dear Doctor Faro:

You are hereby advised, as a matter of record, that the Board of Trustees of New York University has approved the action of the Medical Center Board in appointing you to the staff for the period from February 1 through August 31, 1965, as follows:

Title: Instructor in Experimental Physical Medicine and Rehabilitation

Service: full time

Compensation: paid from special funds

This appointment is governed by the tenure policies and rules of the University.

We welcome you to the faculty, and we trust that you find your work here deeply satisfying.

Sincerely yours,

  
Thomas Clark Pollock

Dr. Maria D. Faro  
84-26 55th Avenue  
Elmhurst, New York 11373

[ PLAINTIFF'S EXHIBIT 1 a ]

# NEW YORK UNIVERSITY

434 VANDERBILT HALL  
WASHINGTON SQUARE, NEW YORK, N.Y. 10003  
ARFA 212 598-2006

Office of the Secretary

July 13, 1970

Dear Professor Faro:

You are hereby advised that the Board of Trustees of New York University has approved the action of the Medical Center Board in appointing you to the staff for the year beginning September 1, 1970, as defined below:

Title: Assistant Professor of Experimental Rehabilitation Medicine

Service: full time

Compensation: paid from special funds

This appointment is governed by the tenure policies and rules of the University.

We trust that your contribution to the progress of the University, which is deeply appreciated, will prove equally satisfying to you.

Sincerely yours,



Miguel de Capriles

Professor Maria D. Faro  
31-22 77th Street  
Jackson Heights, New York

[ PLAINTIFF'S EXHIBIT 1 d ]

New York University  
Vice Chancellor for Academic Affairs  
440 Vanderbilt Hall  
Washington Square  
New York, N.Y. 10003

June 9, 1972

Dear Professor Faro:

It is with great pleasure that I confirm your appointment to the staff of the New York University Medical Center for 1972-73, as approved by the Medical Center Board of Trustees, with the title of

Assistant Professor  
of Experimental Rehabilitation Medicine

Service: full time

Effective: September 1, 1972

We trust that you find your association with the University a source of satisfaction, and we wish to assure you that your contribution is deeply appreciated.

Sincerely yours,

*Eleazer Bromberg*  
Eleazer Bromberg

Professor Maria D. Faro  
31-22 77th Street  
Jackson Heights, New York

[ PLAINTIFF'S EXHIBIT 1 f ]



# NEW YORK UNIVERSITY MEDICAL CENTER

Institute of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

October 27th, 1972

## MEMORANDUM

TO: All Research Directors

FROM: Howard A. Rusk, M. D.

As I indicated in the last faculty meeting we face a very substantial deficit in the current fiscal year's research and training budget. It has become obvious that expenditure reductions are essential and as a first measure we have decided to freeze replacement of terminated personnel who are paid from departmental funds. By departmental funds we mean RT-1 and all funds other than grants awarded by an agency to a specific principal investigator. In the latter instance terminated employees may be replaced to the extent that the grant budget permits. In the event you are uncertain of the source of funding for a particular employee, Mr. Greisman can furnish this information.

In the event you wish to replace an employee paid from RT-1 or other departmental funds please submit the usual personnel requisition along with a memorandum justifying the need to Mr. Greisman who will give them to me for consideration. In each case, the request will receive intensive review.

[ PLAINTIFF'S EXHIBIT 2 b ]

*Exh. 2c*

**PROGRESS REPORT  
SRS 16-P-56801/2-11  
Rehabilitation Research and Training Center**

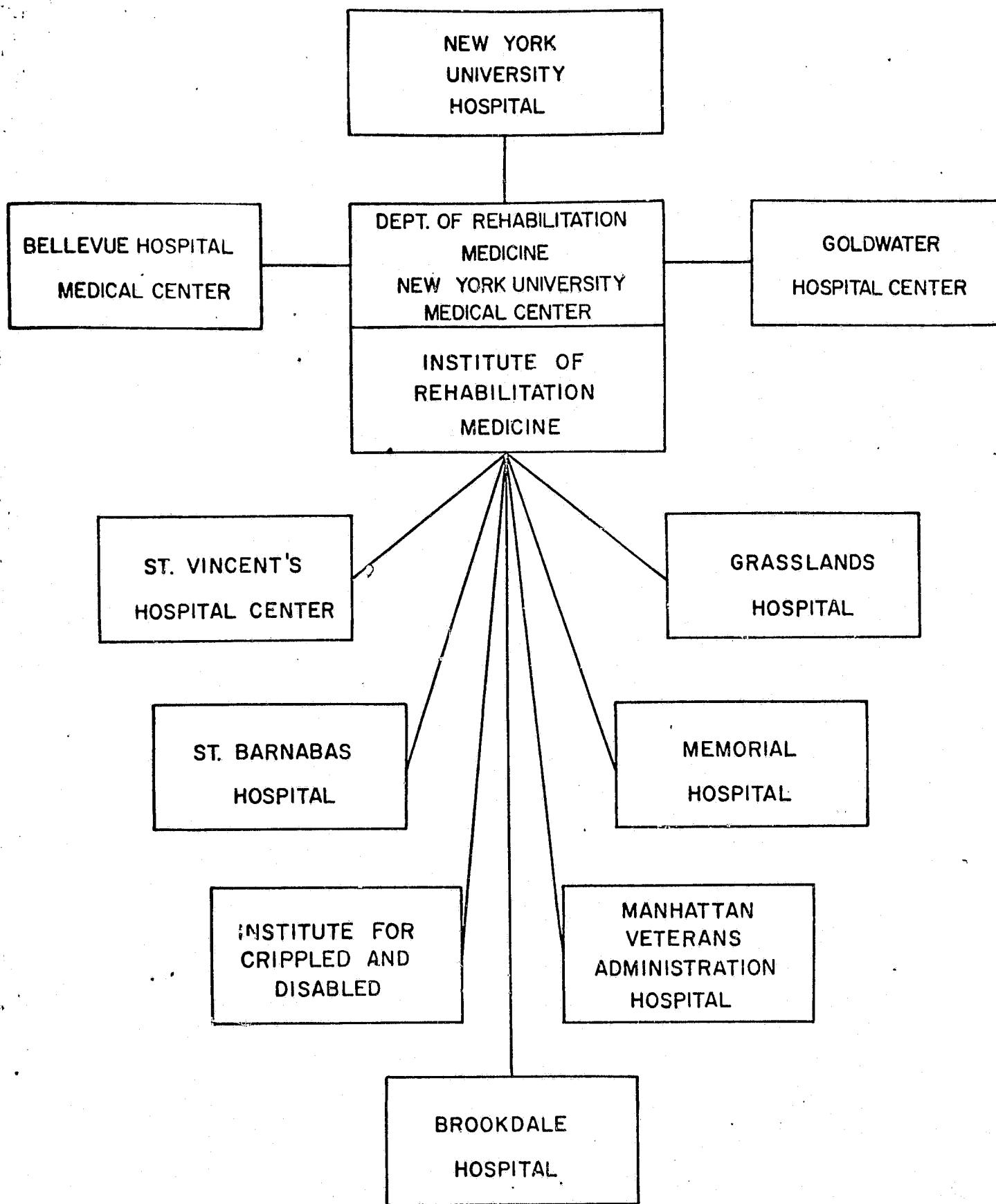
**Grant Period  
October 1, 1971 to September 30, 1972**

**Period Covered by Report  
January 1, 1971 to December 31, 1971**

**New York University Medical Center  
Howard A. Rusk, M.D., Project Director**

**Prepared in January 1972**

**[ PLAINTIFF'S EXHIBIT 2 c ]**



Section 1: Introduction to the Progress  
Report  
- 8 -

The Rehabilitation Research and Training Center ( SIS 16-P-56801/2-11 ) at New York University Medical Center consists physically of a complex of structures and institutions of which the Institute of Rehabilitation Medicine serves as the focal point for the dynamic educational, research and patient service activities of the department and all its affiliates. These include the rehabilitation sections of New York University Hospital, Bellevue Hospital Medical Center, Goldwater Memorial Hospital and the Manhattan Veterans Administration Hospital which are in the immediate vicinity. Others which are within short distances are St. Vincent's Hospital, St. Barnabas Hospital, Memorial Hospital, Grasslands Hospital, Institute for Crippled and Disabled and the Brookdale Hospital Center. This report covers the broad intramural and interdisciplinary research and training activities of our center.

Research and training activities are simultaneously pursued in the central and affiliated areas. The Director of Research and Education, under the Project Director, hold the responsibility for establishing and maintaining overall objectives and methods for procedure. This function is realized without stifling the individual interests, talents and aspirations of the Professional Staff. The interdisciplinary and university wide nature of the research and teaching efforts of the center is a factor of importance and strength in the facilities' organization. There are especially strong ties with neurology, neurosurgery, orthopedics, pediatrics, physiology, and pathology. There are regularly scheduled joint conferences with some services, while combined teaching and research activities involve all.

The purpose and goals of RTC-1 are embodied in the stated mission for these centers which has been formulated by the Social and Rehabilitation Service. In realization of these objectives great challenges are encountered because the problems of the severely handicapped are so multifaceted. We have all become acutely aware, for example, that behavioral deficits must be treated as vigorously

[ PLAINTIFF'S EXHIBIT 2 c, p. 8 ]

as decubiti if the handicapped individual is to successfully return to his home environment.

The patient who comes from a disadvantaged area is particularly susceptible to regression and failure if he returns to a community which is unprepared and uneducated with regard to either his needs or capabilities. Emphasis, therefore, has been placed on the movement for comprehensive care in the community with special focus on the physically disabled from the social and economically deprived groups. There is the realization that the patient who comes from these disadvantaged areas is especially susceptible to missing an active, productive and satisfying life if he returns to a milieu that has not been attuned to his needs and remaining advantageous abilities.

Our goals, therefore, while diverse, include the essential ingredients of establishing model teaching, research and patient care services to fulfill the total needs of the severely disabled. These objectives may be summarized briefly as follows:

- i) To train medical and paramedical personnel in the definitive care (diagnostic and therapeutic) of the handicapped patient.
- ii) To carry out meaningful basic and clinical research programs which increase the understanding of the pathophysiology of chronic disabling disease and to improve all aspects of treatment of these conditions.
- iii) To carry out studies involving both investigative and therapeutic aspects of the social, economic and psychological factors which influence the relationship between the handicapped person and his society.
- iv) To provide superior service care (in-patient, out-patient, special clinics) for the disabled in the medical, socioeconomic and psychological spheres. It is apparent that the objectives and goals are not mutually exclusive. An ex-

[ PLAINTIFF'S EXHIBIT 2c, p. 9 ]

cellent level of bedside or clinic teaching must blend with a similarly attained excellent level of service care to the patient. Bedside instruction backed up by a strong didactic program is also mutually productive - the education process generates competent educators. With regard to the new goals of HEW, education is one of the keys to a beneficial relationship of the handicapped individual to the community in general and his own environment or group in particular. The education of disadvantaged community members, especially in the health service area, can only be augmentative in the successful relationship to its disabled members.

Within the framework of implementation of these stated purposes and goals, it can be anticipated that high level comprehensive care of the profoundly disabled can be and will be successfully realized.

[ PLAINTIFF'S EXHIBIT 2 c, p. 10 ]

RESEARCH

Project Number R-4

Title: A CONTROLLED STUDY OF INHALATIONAL THERAPY IN  
THE REHABILITATION OF PATIENTS WITH CHRONIC  
OBSTRUCTIVE LUNG DISEASE

Project Status: Continuing

Beginning: July, 1967      Expected Completion: July, 1972

Personnel:

Name	Degree	Discipline	% Time on Project
Edward H. Bergofsky	M.D.	Physician	15
Albert Haas	M.D.	Physician	10

Total Patients-Clients Served: RT-Center Funds 78  
On VR Agency Rolls 15  
On Public Assistance 6

Financial Data:

Estimated Annual Cost	11,845	Estimated Duration Cost	65,000	
		RT-Funds	University Funds	Total
Personnel Costs	7,200	2,100		9,300
Supplies		1,000		1,000
Indirect Costs	1,080	465		1,545
Total	8,280	3,565		11,845
Percent	70	30		100

Project Description

Statement of Problem

This study is conceived to test the efficacy of modalities in the general therapy of patients with chronic lung disease and general capability of inhalation therapy in rehabilitating such patients. We were interested in testing ultrasonic nebulization in the liquification of secretions, superheated aerosol

[ PLAINTIFF'S EXHIBIT 2 c, p. 223 ]

RESEARCH

Project Number R-5

Title: THE EFFECTIVE ENVIRONMENTAL FACTORS AND GEOGRAPHIC LOCATION ON VOCATIONAL REHABILITATION AND JOB STATUS OF PATIENTS WITH CHRONIC OBSTRUCTIVE LUNG DISEASE

Project Status: Continuing

Beginning: July, 1970      Expected Completion: July, 1973

Personnel:

Name	Degree	Discipline	% Time on Project
Edward H. Bergofsky	M.D.	Physician	15
Albert Haas	M.D.	Physician	10
R. Sinha	M.D.	Physician	25
Elaine Asper	B.S.	Zoologist	100
Frances Klimek	B.S.	Psychologist	70

Total Patients-Clients Served: 22

Financial Data:

Estimated Annual Cost    46,250      Estimated Duration Cost    143,000

	RT-Funds	University Funds	Total
Personnel Costs	13,000	19,000	32,000
Supplies		3,000	3,000
Equipment		6,000	6,000
Indirect Costs	<u>1,950</u>	<u>3,300</u>	<u>5,250</u>
Total	14,950	31,300	46,250
Percent	32	68	100

[ PLAINTIFF'S EXHIBIT 2 c, p. 226 ]

RESEARCH

Project Number R-6

Title: FACTORS INFLUENCING THE RIGHT HEART FAILURE IN PATIENTS WITH CHRONIC PULMONARY DISEASE AND THEIR INFLUENCE ON WORK AND EXERCISE CAPACITY

Project Status: Continuing

Beginning: January, 1969      Expected Completion: January 1, 1973

Personnel:

Name	Degree	Discipline	% Time on Project
Edward H. Bergofsky	M.D.	Physician	15
Ajit K. Datta	M.D.	Physician	20
Francoise Haas	Ph.D.	Physiologist	50
William M. Foster	M.S.	Physiologist	50
Robert Porcelli	Ph.D.	Physiologist	50

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost 29,210      Estimated Duration Cost 100,000

	RT-Funds	University Funds	Total
Personnel Costs	8,400	14,000	22,400
Supplies		3,000	3,000
Indirect Costs	1,260	2,550	3,810
Total	9,660	19,550	29,210
Percent	33	67	100

Project Description:

Statement of Problem

This project is conceived to study the manner in which pulmonary circulation in patients with chronic pulmonary emphysema and bronchitis develops pulmonary hypertension and chronic failure of the right heart, while they are undergoing physical therapeutic and rehabilitative measures. Such patients demonstrate that the advent of heart failure delays the rate and extent of

[ PLAINTIFF'S EXHIBIT 2 c, p. 230 ]

RESEARCH

Project Number R-7

Title: USE OF PERIODIC LUNG EXPANSION FOR THE  
FACILITATION AND REHABILITATION AND  
PREVENTION OF HOSPITALIZATION IN PATIENTS  
WITH POLIOMYELITIS, QUADRIPLEGIA, KYPHOS-  
COLIOSIS, MUSCULAR DYSTROPHY AND OTHER  
NEUROMUSCULAR DISEASES

Project Status: Continuing

Beginning: July, 1969      Expected Completion: July, 1973

Personnel:

Name	Degree	Discipline	% Time on Project
Edward H. Bergofsky	M.D.	Physician	20
R. Sinha	M.D. Ph.D.	Physician	25
D. Gomez	M.D.	Biomathematician	10

Total Patients-Clients Served: RT-Center Funds 39  
VR Agency Rolls 12  
On Public Assistance 4

Financial Data:

Estimated Annual Cost: 22,770      Estimated Duration Cost: 90,000

	RT-Funds	University Funds	Total
Personnel Costs	14,000	2,500	16,500
Supplies		3,000	3,000
Travel		300	300
Indirect Costs	2,100	870	2,970
Total	16,100	6,670	22,770
Percent	71	29	100

RESEARCH

Project Number R-19

Title: THE USE OF ENRICHED OXYGEN AND COGNITIVE TRAINING IN THE REHABILITATION OF SENILITY AND OTHER NEUROLOGIC DISORDERS

Project Status: New

Beginning: August, 1971      Completed: Indefinite

Personnel:

Name	Degree	Discipline	% Time on Project
Leonard Diller	Ph.D.	Psychologist	15
Yehuda Ben-Yishay	Ph.D.	Psychologist	50
Albert Haas	M.D.	Physician	5
Theobald Reich	M.D.	Physician	15

Total Patients-Clients Served: 6

Financial Data:

Estimated Annual Cost:	24,495	Estimated Duration Cost	Indefinite
RT-Funds	University Funds	Total	
Personnel Costs	16,500	3,800	20,300
Supplies	500	500	1,000
Indirect Costs	<u>2,550</u>	645	<u>3,195</u>
Total	19,550	4,945	24,495
Percent	80	20	100

Project Description:

Statement of the Problem

In many neurologic disorders particularly senility the primary problem is manifested in defects in memory and alertness. It has been known that inadequate supply of oxygen to the brain is present. Recent evidence from others (Jacobs, 1971) as well as

RESEARCH

Project Number R-22

Title: PROGRESSIVE DETERIORATION OF THE  
BRAIN AND MENTAL RETARDATION

Project Status: Continuing

Beginning: January, 1970      Expected Completion: January, 1973

Personnel:

Name	Degree	Discipline	% Time on Project
Maria D. Faro	Ph.D.	Neuropathologist	50
Rafael Lozada	B.A.	Psychologist	100
Jose Boharquez	B.S.	Biologist	100
Pedro Soto	B.A.	Psychologist	100
Miguel Gonzalez	B.S.	Biologist	50
Joan Patnicola	B.A.	Nurse	25
Josefina Santana	B.A.	Statistician	50

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost: 59,225      Estimated Duration Cost: 240,000

	RT-Funds	University Funds	Total
Personnel Costs		47,000	47,000
Supplies	1,000	3,000	4,000
Travel		500	500
Indirect Costs	150	7,575	7,725
Total	1,150	58,075	59,225
Percent	3	97	100

[ PLAINTIFF'S EXHIBIT 2 c, p. 300 1

RESEARCH

Project Number R-47

Title: AN ELECTROMYOGRAPHIC STUDY OF MUSCLE FATIGUE

Project Status: Continuing

Beginning: November, 1969      Expected Completion: November, 1975

Personnel:

Name	Degree	Discipline	% Time on Project
Joseph Goodgold	M.D.	Physician	20
Arthur Eberstein	Ph.D.	Biophysicist	20
Robert Whipple	B.A.	Physical Therapist	50

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost      34,200      Estimated Duration Cost      200,000

	RT-Funds	University Funds	Total
Personnel Costs	14,600	6,900	21,500
Supplies	1,000	5,000	6,000
Travel	250	250	500
Equipment		2,000	2,000
Indirect Costs	<u>2,378</u>	<u>1,822</u>	<u>4,200</u>
Total	18,228	15,972	34,200
Percent	53	47	100

Project Description:

Statement of the Problem

Recent findings in this laboratory as well as others have demonstrated that human skeletal muscle can no longer be considered a bundle of homogeneous fibers, but instead is

[ PLAINTIFF'S EXHIBIT 2 c, p. 405 ]

RESEARCH

Project Number R-48

Title: ELECTROPHYSIOLOGICAL STUDIES IN NEUROMUSCULAR DISEASES

Project Status: Continuing

Beginning: February, 1969      Expected Completion: November, 1975

Personnel:

Name	Degree	Discipline	% Time on Project
Joseph Goodgold	M.D.	Physician	40
Arthur Eberstein	Ph.D.	Biophysicist	20
Neil Spielholz	M.S.	Physiologist	25
Ronald Thomas	B.S.	Physical Therapist	33

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost    56,670      Estimated Duration Cost    370,000

	RT-Funds	University Funds	Total
Personnel Costs	13,100	21,700	34,800
Supplies	5,000	5,000	10,000
Travel	500	500	1,000
Equipment		4,000	4,000
Indirect Costs	<u>2,790</u>	<u>4,080</u>	<u>6,870</u>
Total	21,390	35,280	56,670
Percent	38	62	100

Project Description:

Statement of the Problem

One of the leading causes of severe, chronic disabilities of man are the neuro-muscular diseases. Considerable effort has been expanded over the years to determine the

RESEARCH

Project Number R-50

Title: LONG-TERM FOLLOW-UP OF PULMONARY PERFORMANCE IN PATIENTS WITH MYOPATHY (AMYOTONIA CONGENITA)

Project Status: Continuing

Beginning: September, 1962      Expected Completion: 1975

Personnel:

Name	Degree	Discipline	% Time on Project
Albert Haas	M.D.	Physician	10
Edward H. Bergofsky	M.D.	Physician	15
Leon Greenspan	M.D.	Physician	10
Nicholas Tzimas	M.D.	Physician	10
Paula Gelman	B.A.	Biologist	15

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost    20,125      Estimated Duration Cost

	RT-Funds	University Funds	Total
Personnel Costs	11,500	5,500	17,000
Supplies	400	100	500
Indirect Costs	1,785	840	2,625
Total	13,685	6,440	20,125
Percent	68	32	100

Project Description:

Statement of the Problem

This study is to investigate pulmonary function, air-way resistance, and arterial blood gas composition related to work tolerance during the course of the disease. These factors are not yet documented with a long follow-up in the natural history of the disease. Continuous evaluation

RESEARCH

Project Number R-60

Title: BONE MINERALIZATION IN SPINAL CORD INJURED MAN:  
A BIOCHEMICAL AND RADIOLOGIC INVESTIGATION

Project Status: Continuing

Beginning: September, 1969      Expected Completion: September, 1974

Personnel:

Name	Degree	Discipline	% Time on Project
N.E. Naftchi	Ph. D.	Pharmacologist	35
M. Demeny	Ph. D.	Pharmacologist	50
A.S. Akerkar	Ph. D.	Pharmacologist	50
A. Viau	Ph. D.	Pharmacologist	50
A. Kertesz	B.S.	Chemist	100
M. Johnson	B.S.	Chemist	50
Georg Fleischer	M.D.	Physician	10

Total Patients-Clients Served: RT-Center Funds 10

Financial Data:

Estimated Annual Cost 56,975      Estimated Duration Cost 215,000

	RT-Funds	University Funds	Total
Personnel Costs	33,000	10,000	43,000
Supplies	1,000	2,000	3,000
Travel		500	500
Equipment		3,500	3,500
Indirect Costs	5,100	1,875	6,975
Total	39,100	17,875	56,975

RESEARCH

Project Number R-61

Title: SYMPATHETIC ACTIVITY AND THE  
METABOLISM OF BIOGENIC AMINES  
IN SPINAL CORD INJURED PATIENTS

Project Status: Continuing

Beginning: September, 1968      Expected Completion: February, 1974

Personnel:

Name	Degree	Discipline	% Time on Project
N.E. Naftchi	Ph.D.	Pharmacologist	35
M. Demeny	Ph.D.	Chemist	50
A.S. Akerkar	Ph.D.	Chemist	50
A. Viau	Ph.D.	Physiologist	50
E. Wilk	M.S.	Chemist	100
G. Appleyard	B.A.	Biologist	100
M. Johnson	B.S	Chemist	50

Total Patients-Clients Served: RT-Center Funds 105

Financial Data:

Estimated Annual Cost 82,750      Estimated Duration Cost 380,000

	RT-Funds	University Funds	Total
Personnel Costs	35,000	22,000	57,000
Supplies	1,000	4,000	5,000
Travel	1,000	2,000	3,000
Equipment		8,000	8,000
Indirect Costs	<u>5,550</u>	<u>4,200</u>	<u>9,750</u>
Total	42,550	40,200	82,750
Percent	51	49	100

RESEARCH

Project Number R-64

Title: PATHOGENESIS OF PULMONARY OXYGEN TOXICITY: SIGNIFICANCE OF CIRCULATING BIOGENIC AMINES

Project Status: Continuing

Beginning: July, 1970      Expected Completion: April, 1972

Personnel:

Name	Degree	Discipline	% Time On Project
Theobald Reich	M.D.	Physician	30
Margaret Demeny	Ph.D.	Chemist	20
N. Eric Naftchi	Ph.D.	Pharmacologist	5
William Manger	M.D., Ph.D.	Physician	20
Edwardo Rodriguez	M.D.	Physician	25
Charles Reustle		Chamber operator	25
Howard Carswell		Chamber operator	25
Susan Simon	R.N.	Nurse	25
Willie Moore		Technician	25

Total Patients-Clients Served: 0

Financial Data:

Estimated Annual Cost	42,400	Estimated Duration Cost	85,000
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	RT-Funds	University Funds	Total
Personnel Costs	6,600	26,400	33,000
Supplies		3,000	3,000
Equipment		1,000	1,000
Indirect Costs	990	4,410	5,400
Total	7,590	34,810	42,400
Percent	18	82	100

[ PLAINTIFF'S EXHIBIT 2 c, p. 472 ]

Faculty Titles

In 1960, the Board of Trustees issued a comprehensive statement on the subject of permanent or continuous tenure. It appears in a later section headed "Statement in Regard to Academic Freedom and Tenure." The Bylaws in effect at that time gave only brief descriptions of faculty titles; new Bylaws adopted since then give more ample descriptions. The text of Bylaws 71, 72, and 73, approved May 27, 1968, as amended through May 1971, will be found below. It should be understood that in the event of conflict between earlier and later statements by the Board, the most recent statement governs.

Bylaw 71. Professors and Associate Professors. Professors and associate professors are usually appointed to serve on a full-time basis, and only full-time professors and associate professors may achieve permanent or continuous tenure at the University. Unless otherwise specified, professors and associate professors are appointed for one year only, but they may be appointed for a longer period or without limit of time, subject to such rules respecting tenure as the Board may adopt.

Bylaw 72. Assistant Professors and Instructors. (a) Assistant professors and instructors are usually appointed for one year only, but full-time service in these ranks may be counted, to the extent permitted under the rules of the Board, toward the attainment of tenure by assistant professors and instructors who are promoted to the rank of associate professor or professor.

(b) A full-time assistant professor who is not promoted at the expiration of six years as a full-time assistant professor, or after seven years of service in the ranks of instructor and assistant professor, shall be ineligible for further full-time appointment in the University. An exception is made only for faculty members appointed as full-time assistant professors before March 22, 1954.

(c) A full-time instructor shall not ordinarily serve for more than three years in that rank, and if not promoted at the expiration of six years as an instructor shall be ineligible for further full-time appointment in the University.

(d) The appropriate dean or departmental chairman shall as a matter of academic courtesy give notice of these rules to full-time assistant professors and instructors in the fifth year of their respective ranks, but no assistant professor or instructor shall be promoted or acquire tenure rights on the ground that he did not receive a notice or reminder of this section of the Bylaws.

Bylaw 73. Nontenure Positions. Instruction or research service shall be without tenure implications of any kind, regardless of rank or title, if rendered in a part-time capacity, or in a temporary position, or in a program having a subsidy of limited duration. Appointment to a nontenure position shall be for a definite period of time, not exceeding one academic year unless otherwise specified, and shall

automatically terminate at the close of that period unless there is an official notice of renewal. Nontenure positions include the following:

- research professor, research associate professor, research assistant professor (except when the title of research professor is conferred as a distinction upon a person already having tenure at New York University);
- adjunct professor, adjunct associate professor, adjunct assistant professor;
- clinical professor, clinical associate professor, clinical assistant professor;
- visiting professor, visiting associate professor, visiting assistant professor;
- senior research scientist, research scientist, associate research scientist, assistant research scientist;
- lecturer, master teacher, teacher, master artist, artist-in-residence;
- teaching fellow, teaching associate, teaching assistant;
- associate, research associate, assistant, clinical assistant, graduate assistant, research assistant.

Any position designated by a title not specified in this chapter shall be a nontenure position unless the Board determines otherwise.

**Comments on Certain Teaching Staff Titles.** The title Acting Professor (or Acting Associate Professor or Acting Assistant Professor) is applicable to a temporary appointee of appropriate caliber who may succeed to unqualified appointment to the rank thus tentatively occupied but who ordinarily has no assurance of such succession. Occasions for such temporary appointment are rare and are employed only when other designations fail to satisfy the circumstances.

The title Visiting Professor (or Visiting Associate Professor or Visiting Assistant Professor) is ordinarily applicable to an appointee who is a member of the teaching staff on leave of absence as a full-time teacher of corresponding professorial rank from another institution. The duration of the appointment of a visiting professor normally shall not exceed one year.

The title Research Professor (or Research Associate Professor or Research Assistant Professor) may be employed as a courtesy title without tenure implications. In the case of regular members of the teaching staff it is ordinarily restricted to those of full professorial rank who have previously attained tenure. Those serving temporarily on year-to-year appointment under research contract and who are engaged incidentally in temporary teaching assignments may be accorded such titles without tenure implications.

The title Clinical Professor (or Clinical Associate Professor or Clinical Assistant Professor) is applicable in the medical and dental divisions to an appointee whose professional attainments are comparable to those required for the regular professorial grades but whose teaching service is part time.

The title Adjunct Professor (or Adjunct Associate Professor or Adjunct Assistant Professor) is applicable to an appointee whose academic preparation and professional attainments are such as to meet the qualifications for the regular professorial grades as set forth in the tenure statement but who

gain, except in the case of sporadic and wholly unrelated engagements, should be based upon an understanding with the administration of the University.

The teacher is entitled to freedom in the classroom in discussing his subject, but he should not introduce into his teaching controversial matter that has no relation to his subject.

The teacher is a citizen, a member of a learned profession, and an officer of an educational institution. When he speaks or writes as a citizen he should be free from institutional censorship or discipline, but this special position in the community imposes special obligations. As a man of learning and an educational officer he should remember that the public may judge his profession and his institution by his utterances. Hence he at all times should be accurate, should exercise appropriate restraint, should show respect for the opinions of others and for the established policy of his institution, and while properly identifying himself to outside audiences as associated with the University should clearly indicate that he is not an institutional spokesman unless specifically commissioned to serve in such a capacity.

#### V. Academic Tenure

1. [Part-time positions and other positions] A distinction is made between part-time and full-time members of the teaching staff. Unless their notices of appointment explicitly state that they are appointed for full-time teaching service, officers of instruction, of whatever rank, are considered part-time members of the teaching staff. The full-time members of the teaching staff are those teachers who give full-time service to the University and whose notices of appointment explicitly so indicate.

All part-time appointees to the University staff, irrespective of title, rank, or cumulative length of service, are entitled to no right of tenure, and their appointments are limited strictly to the periods stipulated in the official notices thereof. Likewise, all those receiving appointment in such temporary capacities as fellow, assistant, associate, lecturer, or as acting, adjunct, clinical, and visiting officers of instruction in the several ranks, whether rendering full- or part-time service, are ineligible for tenure on the basis of such service and are restricted in the duration of their connection with the University to the period stipulated in the official notices of appointment. The same stipulation applies to personnel appointed with professorial or other titles, whether on full- or part-time service, on subsidized assignments such as sponsored research, or in teaching programs where expense of the program is dependent upon a subsidy of limited duration. [Cf. Bylaw 73.]

2. [Tenure described] The general policy of the University with respect to probation and tenure for full-time instructors, assistant professors, associate professors, and professors is given below. After expiration of the stipulated probationary periods, full-time associate professors and professors are considered to have permanent or continuous tenure, and their services are to be terminated only for

adequate cause, except in the case of retirement at age 68, or under extraordinary circumstances because of financial exigencies, or because of the discontinuance of a considerable part of the University, such as a college, school, or division or a department in a college, school, or division. It is understood that the University has the right to reduce the length of the probationary period in specific cases.

3. [Instructor] Appointment to a full-time instructorship carries with it the possibility of reappointment but includes no right to permanent or continuous tenure, or to further reappointment, or to promotion to an assistant professorship. A full-time instructor shall not ordinarily serve for more than three years in that rank, and if not promoted at the expiration of six years as an instructor, shall be ineligible for further full time appointment in the University. [Cf. By-law 72(c).]

4. [Assistant Professor] The rank of Assistant Professor should be granted only to those who have proved their worth as teachers and have given evidence of character and productive scholarship. The assistant professor should possess the maturity and attainment in the field of scholarship or professional practice of which the doctor's degree is frequently the testimonial. Appointment to an assistant professorship carries with it the possibility but no presumption of reappointment and includes no right to permanent or continuous tenure or to further reappointment, or to promotion to any higher rank.

A full-time assistant professor who is not promoted at the expiration of six years as a full-time assistant professor, or after seven years of service in the ranks of instructor and assistant professor, shall be ineligible for further full-time appointment in the University. An exception is made only for faculty members appointed as full-time assistant professors before March 22, 1954. [Bylaw 72(b).]

5. [Associate Professor] The rank of Associate Professor should be granted only to those who, in addition to all the qualifications for an assistant professorship, have an unusual contribution to make to the University through the excellence of their character, teaching, productive scholarship, or other educational service. There is no presumption in appointing an associate professor that he will later be promoted. Reappointment as an associate professor does not imply any subsequent appointment at higher rank. Under any of the following conditions the appointment or reappointment of an associate professor carries with it the right of continuous or permanent tenure if it is for: (1) the sixth year as a full-time associate professor at New York University; or (2) the eighth year as a full-time teacher at New York University in the rank or ranks of instructor, assistant professor, or associate professor; or (3) the ninth year as a full-time teacher at New York University and follows a term of more than three years, i.e., not less than seven semesters of full-time teaching in one or more institutions of higher education other than New York University in the rank or ranks of instructor, assistant professor, associate professor, or professor.

If a full-time teacher at the time of his first appointment at New York University has formally disclosed to the appropriate dean or officer of

# NEW YORK UNIVERSITY MEDICAL CENTER

Department of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

July, 29, 1971

Dr. Maria Faro  
Institute of Rehabilitation Medicine  
400 East 34th Street  
New York, New York

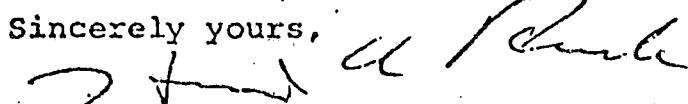
Dear Doctor Faro:

In accordance with the University policy on tenure procedures developed by the Faculty Personnel Committee and adopted by the University Senate, I wish to inform you that your position at New York University has been reviewed and that we find it necessary to terminate, as of August 31, 1972, your present appointment, which identifies you as a full-time member of the academic faculty. This step is being taken in conformity with the policy of the University to confine the use of full-time academic titles, along with the related implications of the tenure regulations, as much as possible to those whose activities are predominantly instructional.

We are eager, however, to have you continue your present program as a regular member of our clinical and research staff, but with a title more truly reflective of your status at the Medical Center. We, therefore, should like to invite you to accept reappointment on September 1, 1972, at the rank of Research Associate Professor of Rehabilitation Medicine (part-time). This new appointment will have no tenure implications, as these apply only to full-time academic positions. Your present staff work will be continued as a full-time appointee in the category of Research Scientist which will assure you of complete continuation of University fringe benefits including the retirement plans.

If the new titles are acceptable, would you be kind enough to sign the enclosed acknowledgement and return to my office as soon as possible.

Sincerely yours,



Howard A. Rusk, M.D.

Professor and Chairman  
Department of Rehabilitation  
Medicine

[ PLAINTIFF'S EXHIBIT 4 ]

# NEW YORK UNIVERSITY MEDICAL CENTER

Institute of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

Dr. Howard A. Rusk  
Professor and Chairman  
Department of  
Rehabilitation Medicine  
400 East 34th Street  
New York, New York 10016

Dear Doctor Rusk:

I wish to acknowledge receipt of your letter dated July 29,  
regarding the change in my academic rank and tenure status effective  
9/1/72.

The proposed change is satisfactory. I am pleased to continue in  
the capacity of a full-time, non-tenured, compensated, staff member.

Sincerely yours,

Maria Faro, Ph.D.

HAR:lrg

[ PLAINTIFF'S EXHIBIT 4, ATTACHMENT ]



# NEW YORK UNIVERSITY MEDICAL CENTER

Department of Rehabilitation Medicine  
400 EAST 34TH STREET, NEW YORK, N.Y. 10016  
AREA 212 679-3200  
CABLE ADDRESS: NYU MEDIC

March 23rd, 1973

Dr. Maria Faro  
31-22 77th Street  
Jackson Heights, N.Y. 11370

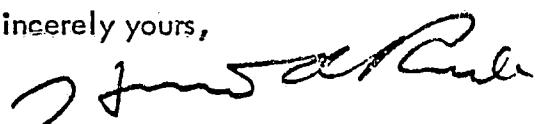
Dear Doctor Faro:

I should like to confirm our recent conversation and to acknowledge your note regarding termination of the Asphyxia Project. In line with option 1 the research will cease on April 1st, 1973 with release of all personnel except for a part-time technician (10 hours weekly) and a part-time typist (15 hours weekly). These two persons will continue until August 31st, 1973. It is agreed that you will devote all of your time in collation of data and preparation of publications for an additional four months so that your appointment to the staff and faculty will terminate on December 31st, 1973.

As you know, this action is most regrettable since I have always been impressed with your work and your personal and professional integrity. This solution is solely reflective of the fiscal crisis which has necessitated center wide program curtailment.

If there is any way I may be of help in your efforts to secure a new position my complete assistance is available..

Sincerely yours,



Howard A. Rusk, M.D.  
Professor and Chairman

HAR:lp

[ PLAINTIFF'S EXHIBIT 5 ]

develop innovations in a given area, e.g., population, urban mass transportation, noise, health, pollution, or, perhaps, astrophysics. If our faculty members have expertise in these fields, only then will we apply for that programmatic support. The decision on a substantive level is the faculty member's. We try to assist the faculty in the realization of their scholarly programs.

With the significant increase in commitment of intellectual and fiscal resources to sponsored research and training programs, the University has developed over these past two decades several policies. These guiding principles were approved after detailed examination approximately a year ago by a University Senate Committee. These policies are spelled out elsewhere but two in particular are especially worthy of mention here.

Each faculty and professional research staff member has the right to publish the results of his findings in the usual scholarly and technical journals. This is more than a right; it is a professional responsibility to assure the continuing development of a scholarly field and to make sure that such communication takes place in open, objective articles available to colleagues all over the world. For this reason, the University modified its stand with respect to classified research. At this time we no longer will accept such activities.

The decade also witnessed a growth of research involving clinical trials and experiments with individuals or groups in a medical, psychological, or community setting. The U.S. Public Health Service observed a potential for abuse that could prove to be detrimental to the wellbeing of the experimental subjects. Accordingly, New York University, along with other institutions engaged in such research, has developed a set of principles on "informed consent."

These policies assure that an experimenter has provided each subject of an experiment with sufficient information and in language that a subject can understand for the latter to make an intelligent decision on whether he wishes to participate in the experience. As many faculty members can testify, the University Committee charged with administering this policy takes its role seriously. It is not loathe to ask experimenters for additional information or to suggest that greater assurance must be given to protect the rights of the subjects involved.

#### The 1969-1971 Biennium

With the above principles as a guide, our faculty and research staff have continued to expand the sponsored research and training activities at New York University during this biennium. This growth represents one of the more surprising developments considering the slacking off of federal support and the increased competition for research dollars. Our own student and faculty populations decreased during this period; nevertheless, the faculty were

successful in undertaking more research and training and allied activities supported from a variety of sources than ever before. Our 1969-1971 expenditures for all these programs reached \$100,617,000, representing a 6.2 percent increase over the previous two-year period. The Medical Center alone accounted for 48.2 percent of this total and 58.5 percent of the research expenditures of the University.

#### Federal Support

Total federal support reached a new high of \$78,473,000 for the biennium. However, the University's total sponsored program continued to grow at a faster pace than it acquired federal awards. Grants and contracts from federal agencies represented only 78 percent of our overall funds, the lowest percentage experienced in this decade.

As usual, the Public Health Service of the U.S. Department of Health, Education, and Welfare, principally the National Institutes of Health and the National Institute of Mental Health, was our greatest supporter. It has become more important than ever and was the source of 40.9 percent of all research and training support over this period.

The Office of Education and the Social and Rehabilitation Service, the other two major arms of the DHEW, replaced the Department of Defense for the first time as the next leading supporters of research and training at the University. Thus in all, the DHEW accounted for 55.9 percent of all our sponsored program expenditures in this biennium. Such data indicated, indeed, the major shift of the University's participation and interests since the beginning of the decade in 1960-1961. Our involvement in health, social research and training, and environmental health has become a dominant theme.

Even though neither the National Endowment for the Humanities nor the National Endowment for the Arts has become a major source for our research efforts as yet, their appearance on the federal scene is certainly worthy of mention. Their relatively small sums have contributed an important element to the humanities and arts within our own Institute of Fine Arts and in various departments of the arts and science faculties. And we must not overlook the continuing reliance we place upon the National Science Foundation for its major contribution to our scientific efforts.

While most awards listed within this book are grants or contracts for individual faculty members and their associates, the several institutional

awards derived from the National Institutes of Health through the General Research Support Program (for the School of Medicine and College of Dentistry) and the Biomedical Sciences Support grants for other faculty of the University concerned with biomedical research represent a very significant input for the University. These awards along with the National Science Foundation's Institutional Grant and University Science Development Grant for the Departments of Physics and Psychology have given us more than five and a half million dollars over this two year period. Each such grant enables the University to make important decisions on its own concerning the future course of our scientific development. It is good to report that our University Science Development Grant has been recently supplemented to carry us through 1975 with an additional \$1,600,000 from the National Science Foundation.

#### **State and Local Support**

While New York State and City have been providing significant sums for many purposes including overall support of the institution, the amount of research and training grants from both state and local government has actually experienced a decrease in this biennium. The total of \$4,395,000 is lower than the sum we received two years ago. These funds are most valued by the School of Medicine and the School of Education. The latter in particular has continued its major studies of school systems throughout the country. In addition, the School of Continuing Education has emerged as one of the major trainers of para-professionals through several grants from the state and New York City, as well as some federal agencies.

#### **Private Support**

Again, private support for research and training has increased significantly in this biennium continuing the trend of previous reports. In 1969-1971 the support from this sector reached an all-time high of \$17,750,000 or 17.6 percent of the total reported for the period. Our expenditures from philanthropic foundation awards alone amounted to \$9,061,000 for a 53.9 percent increase over the previous report.

This support within the private sector is a very healthy sign for our activities inasmuch as it lessens our dependency upon the annual research budgets of governmental agencies. Further, one has opportunities to undertake research that governmental agencies may not wish to undertake because of political implications, especially in the social realm. The increase in our foundation support for research would indicate that the Tax Reform Act of 1969 has not as yet resulted in any stemming of funds from that sector.

[ PLAINTIFF'S EXHIBIT 8, p. xvi ]

### New York University

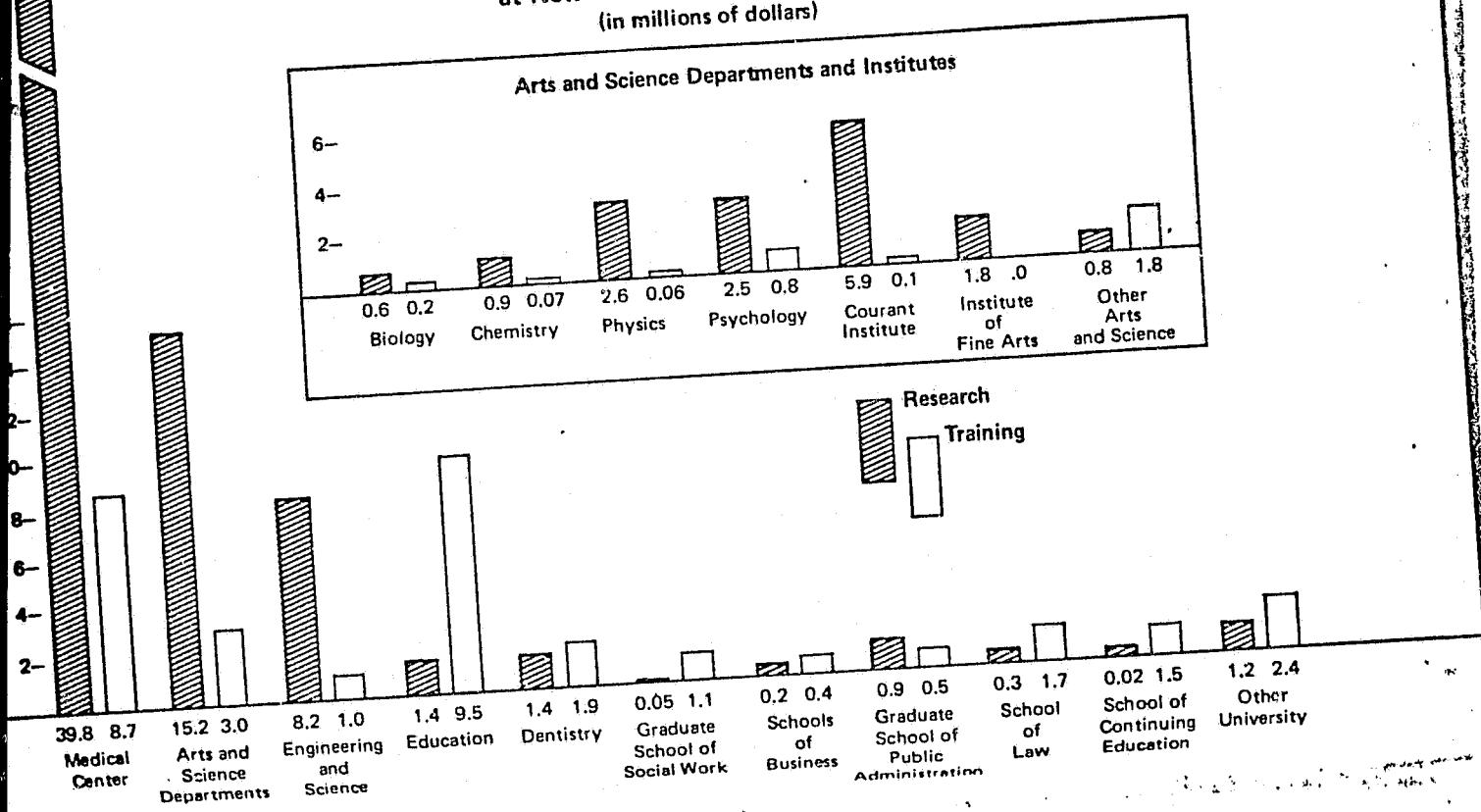
The University has continued its support of faculty and of student research through its regular budget. More faculty than ever before have had reduced teaching loads in order to engage in scholarly pursuits or have received modest grants from the several funds administered by the University.

The large programs represented by this roster in this brochure signify that the University needs the space, the specialized facilities and equipment, and other elements that are required to carry out such programs. These costs are borne under the heading of Overhead or Indirect Costs. Unfortunately, the University must still share these costs in large measure with many federal agencies because of federal requirements. While we do not have a hard and fast rule on whether we can afford a given program, generally the guideline is one of flexibility. The University is not in a position to subsidize governmentally sponsored research and training. Only if a program is contributing significantly to a department or school development will we consider going beyond our normal principle of cost-sharing to approximately 5 percent of total costs. In all, our commitment to research is clear. The University absorbs at least \$4,000,000 a year in various ways. But this commitment must be tempered by the realization that we cannot extend our very slim resources beyond reasonable bounds.

The faculty, the research staff, and the students involved in these programs are all to be commended upon their scholarly progress in making New York University one of the major centers for intellectual development in the nation. As may be seen by reading this report, every faculty is committed to some degree to these programs. More than 1,000 faculty members participated with an equally large number of professional research staff, research assistants, trainees, and fellows. Despite these difficult days this effort will continue in its course.

Much of this activity is undertaken at considerable sacrifice by faculty members whose dedication to scholarship is best exemplified by the results and acclaim they achieve from their colleagues. The Office of Sponsored Programs is privileged to work with a good part of the faculty and the administrators in helping the programs reported herein move forward. Friends and supporters of New York University should be proud of the record of accomplishment reported here. Its testimony augurs well for the future of this institution.

**Research and Training Expenditures by Academic Units  
at New York University 1969-1971  
(in millions of dollars)**



**RESEARCH AND TRAINING EXPENDITURES BY ACADEMIC UNITS AT NEW YORK UNIVERSITY  
IN THE ACADEMIC YEARS 1969-1970 AND 1970-1971**  
(in thousands of dollars)

	1969-1970		1970-1971		Both Years Total*	Percent
	Research	Training	Research	Training		
<b>Arts and Science Departments</b>						
All-University Department of Biology	\$ 7,541	\$ 1,781	\$ 7,626	\$ 1,613	\$18,561	18.5
All-University Department of Chemistry	362	85	280	104	831	.8
All-University Department of Physics	372	14	530	53	969	1.0
All-University Department of Psychology	1,222	7	1,412	50	2,691	2.7
Courant Institute of Mathematical Sciences	1,100	463	1,406	376	3,345	3.3
Institute of Fine Arts	3,127	254	2,741	86	6,208	6.2
Other arts and science	906	—	910	—	1,816	1.8
	451	958	347	943	2,699	2.7
	4,225	477	3,941	561	9,204	9.1
<b>School of Engineering and Science</b>						
School of Education	836	4,945	588	4,591	10,960	10.9
College of Dentistry	759	1,008	684	874	3,325	3.3
Graduate School of Social Work	47	613	4	527	1,191	1.2
Schools of Business	144	312	52	100	608	.6
Graduate School of Public Administration	306	210	633	291	1,440	1.4
School of Law	181	809	145	931	2,066	2.1
School of Continuing Education	—	671	21	788	1,480	1.5
Other University	44	893	775	1,551	3,263	3.2
<b>Sub-Total</b>	14,082	11,719	14,470	11,828	52,099	51.8
<b>Medical Center</b>	19,563	4,198	20,289	4,467	48,517	48.2
<b>TOTALS*</b>	\$33,635	\$15,917	\$34,759	\$16,295	\$100,617	100.0

[ PLAINTIFF'S EXHIBIT 8, chart ]

\_\_\_\_\_. *Personal Monitoring Device for Sulfur Dioxide*  
HEALTH RESEARCH COUNCIL OF THE CITY OF NEW YORK

Pasternack, Bernard S. *Adolescents Exposed at Hiroshima and Nagasaki*  
ATOMIC ENERGY COMMISSION

\_\_\_\_\_. *Spatial Distribution of Alpha Dose*  
ATOMIC ENERGY COMMISSION

Sivak, Andrew. *Neoplastic Growth and Cell Cycle Control*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Tumor Promotors*  
UNITED STATES DEPARTMENT OF AGRICULTURE

Troll, Walter. *Proximate Bladder Carcinogens*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Toxicological Evaluation of Mutagens and Carcinogens*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Tumor Promotion by Protease Inhibitors*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_, and Norton Nelson. *National Aniline Aromatic Amines*  
ALLIED CHEMICAL CORPORATION

Van Duuren, Benjamin L. *Alkylating Agents*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Alkylating Carcinogens*  
AMERICAN CANCER SOCIETY, INC.

\_\_\_\_\_. *Carcinogens*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Inhibition of Tumorogenesis*  
AMERICAN MEDICAL ASSOCIATION EDUCATION AND RESEARCH FOUNDATION

\_\_\_\_\_. *Tumor Promoting Principle of Tobacco and Tobacco Smoke*  
NATIONAL INSTITUTES OF HEALTH

**Institute of Rehabilitation Medicine**

**Department of Rehabilitation Medicine**

Howard A. Rusk, Director and Chairman

Barker, June N. *Local Tumor Blood Flow*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Perinatal Cerebral Blood Flow*  
UNITED CEREBRAL PALSY RESEARCH AND EDUCATIONAL FOUNDATION, INC.

Bergofsky, Edward H. *Effect of Air Pollution on Obstructive Lung Disease*  
ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_. *Training and Research in Respiratory Diseases*  
CONSTANCE GETZ BRESKY FUND

Clark, Paul R. *Training Program in Rehabilitation Medicine*  
SOCIAL AND REHABILITATION SERVICE

Diller, Leonard. *Clinical Psychology*  
NATIONAL INSTITUTE OF MENTAL HEALTH

\_\_\_\_\_. *Cognition and Rehabilitation of Hemiplegics*  
SOCIAL AND REHABILITATION SERVICE

\_\_\_\_\_. *Rehabilitation Teaching and Training Program*  
SOCIAL AND REHABILITATION SERVICE

\_\_\_\_\_. *Response Patterns in Brain-Damaged Children*  
EASTER SEAL RESEARCH FOUNDATION  
UNITED STATES OFFICE OF EDUCATION

Eberstein, Arthur. *Electrophysiologic Studies in Induced Myotonic Muscle*  
NATIONAL INSTITUTES OF HEALTH

Faro, Maria D. *Brain Damage*  
THE HECKSCHER FOUNDATION FOR CHILDREN

\_\_\_\_\_. *Brain Damage at Birth and Mental Retardation*  
NEW YORK FOUNDATION, INC.

\_\_\_\_\_. *Mental Retardation*  
THE HELENA RUBINSTEIN FOUNDATION, INC.

\_\_\_\_\_. *Relationship Between Early Asphyxiation and Mental Ability*  
NATIONAL ASSOCIATION FOR RETARDED CHILDREN

Gerler, Menard M. *Advanced Epidemiology of Cardiovascular Disease*  
SOCIAL AND REHABILITATION SERVICE

\_\_\_\_\_. *Coronary Heart Disease in Young Adults*  
THE COMMONWEALTH FUND

\_\_\_\_\_. *Parameters of Ischemic Cerebrovascular Disease Relative to Rehabilitation*  
SOCIAL AND REHABILITATION SERVICE

\_\_\_\_\_. *Predictive Coagulation Profile of Ischemic Vascular Disease*  
THE JOHN A. HARTFORD FOUNDATION, INC.

Goodgold, Joseph. *Development and Maintenance of a Primate Resource*  
NATIONAL INSTITUTES OF HEALTH

\_\_\_\_\_. *Neuromuscular Disease*  
THE JOHN A. HARTFORD FOUNDATION, INC.

—. *Traineeships in Rehabilitation Medicine*  
SOCIAL AND REHABILITATION SERVICE

Gordon, Ronnie. *Preschool Development Program in a Rehabilitation Center*  
for Multihandicapped Children  
UNITED STATES OFFICE OF EDUCATION

Hofkosh, Jack M. *Physical Therapy Aide Training Program*  
INTERNATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Klinger, Judith. *Product Analysis*  
CAMPBELL SOUP COMPANY FUND

Lehneis, Hans R. *Bioengineering Design and Development of*  
Lower-Extremity Orthotic Devices  
SOCIAL AND REHABILITATION SERVICE

Lowman, Edward W. *Metabolic Research*  
THE EUGENE AND ESTELLE FERKAUF FOUNDATION

—. *Research in Rehabilitation Medicine*  
EDMOND A. GUGGENHEIM FUND  
THE MURRY AND LEONIE GUGGENHEIM FOUNDATION  
SUNDRY DONORS

Munroe, J. Spencer. *Intraplacental Inoculation of Pregnant Monkeys with*  
Tumor Cells  
AMERICAN CANCER SOCIETY INSTITUTIONAL GRANT

—. *Steroid Research*  
SHELDON ELECTRIC COMPANY, INC.  
SUNDRY DONORS

Reich, Theobald. *Lung Damage in Nonpulmonary Trauma*  
OFFICE OF THE SURGEON GENERAL, UNITED STATES ARMY

Rosen, Sidney. *Psychiatric Rehabilitation Fellowship*  
THE GRANT FOUNDATION, INC.

Rosenbluth, Jack. *Cytology and Function of Adrenergic Neurons in Brain*  
NATIONAL INSTITUTES OF HEALTH

—. *Ultrastructure of Developing Nervous Tissue*  
NATIONAL INSTITUTES OF HEALTH

Rusk, Howard A. *Driver Training Program*  
THE MARY DUKE BIDDLE FOUNDATION

—. *Fellowships and Graduate Training in the Field of Physical*  
Medicine and Rehabilitation  
HERBERT H. LEHMAN ENDOWMENT FUND

—. *General Fund for Research and Education*  
WILLIAM T. GRANT FUND  
HOROWITZ EDUCATION AND TRAINING FUND  
JAMES HILTON MANNING AND EMMA AUSTIN MANNING,  
FOUNDATION, INC.  
KIMMELMAN FOUNDATION  
H. RUBIN FOUNDATION, INC.  
SAMUEL AND ROSE MITCHELL FUND  
EDUCATIONAL ENDOWMENT FUND OF KAPPA KAPPA GAMMA  
SUNDRY DONORS

—. *Health Career Opportunities Program*  
LADIES AUXILIARY OF THE INSTITUTE OF REHABILITATION  
MEDICINE

—. *Hyperbaric Oxygenation*  
THE JOHN A. HARTFORD FOUNDATION, INC.

—. *Hypertension and Stroke Research*  
THE AVALON FOUNDATION  
THE ANDREW W. MELLON FOUNDATION

—. *International Activities Fund*  
WORLD REHABILITATION FUND, INC.  
HENRY AND LUCY MOSES FUND, INC.  
SUNDRY DONORS

—. *Memorial Hospital Program*  
SOCIAL AND REHABILITATION SERVICE

—. *Rehabilitation Center Program*  
NEW YORK STATE DEPARTMENT OF HEALTH

—. *Rehabilitation Research and Training Center*  
SOCIAL AND REHABILITATION SERVICE

—. *Steroid Study*  
SCHERING CORPORATION

—. *Stroke Research*  
HERMAN GOLDMAN FOUNDATION, INC.

Russek, Allen S. *Research in Prosthetics*  
ROBERT MARTIN CORPORATION  
SUNDRY DONORS

Sechzer, Jeri A. *Learning and Memory*  
NATIONAL INSTITUTES OF HEALTH

Swinyard, Chester A. *A Study of the M. A. Pearlstein Papers*  
UNITED CEREBRAL PALSY RESEARCH AND EDUCATIONAL  
FOUNDATION, INC.

*Professors*

Altszuler, Norman, B.S., M.S., Ph.D.  
Cox, Rody P., (Medicine and Pharmacology),  
M.D.  
Zannoni, Vincent G., B.S., M.S., Ph.D.

*Adjunct Professor*

Steele, Robert, B.S., Ph.D.

*Associate Professors*

Cohen, Sanford N., (Pediatrics and Pharmacology), A.B., M.D.  
Grossman, Albert, B.S., A.M., Ph.D.  
Margolis, Richard U., B.S., Ph.D., M.D.  
Musacchio, Jose M., M.D. [La Plata]  
Weber, Wendell W., A.B., Ph.D., M.D.

*Research Associate Professor*

Reem, Gabrielle H., M.D. [Basel]

*Assistant Professors*

Naftchi, Nosrat E., (assigned to Rehabilitation Medicine), A.B., M.S., Ph.D.  
Stern, Arnold, Ph.D., M.D.

*Assistant Professor of Medicine (assigned to Pharmacology)*

Raisfeld, Ilene H., B.S., M.D.

*Research Assistant Professor*

Boctor, Amal M., B.S., M.S. [Cairo]; Ph.D.

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*Second Year*

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**Lectures**—Four hours a week. The most important drugs are discussed with regard to their effects, mechanism of action, distribution, fate, toxicity, and therapeutic applications. Attention is given to the relationship between chemical structure and pharmacological action and to the biochemical basis for the action of these drugs.

**Laboratory**—Two 6-hour sessions during the course. Students working in small groups explore the basic concepts that affect the disposition of drugs in the body and study the interaction of various select drugs on the cardiovascular system. Additional optional or elective experiments are available.

**Conferences**—Eight 2-hour sessions are devoted to special topics that extend the basic concepts into clinical and therapeutic situations, e.g., drug-drug interactions, drug-induced diseases, and drug abuse. Films and special clinically oriented lectures are used to supplement the course.

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*Electives*

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Elective work is available by arrangement with the Office of the Dean and the departmental chairman.

**Physiology and Biophysics**

*Professor of Physiology and Chairman of the Department*

To be appointed.

*Professors of Physiology*

Bush, Ian E., A.B., Ph.D.; A.M., M.B., B.C.,  
[Cambridge]

Kandel, Eric R., (assigned to Psychiatry),  
A.B., M.D.

Rosenbluth, Jack, (assigned to Rehrl  
Medicine), A.B., M.D.

Spencer, W. Alden, A.B., M.S., M.D.

*Professor of Experimental Ophthalmology and Professor of Physiology*

Ripps, Harris, B.S., M.S., A.M., Ph.D.

*Associate Professor of Physiology*

Bergofsky, Edward H., (assigned to Rehabilitation Medicine), B.S., M.D.

*Associate Professor of Biophysics and Acting Chairman of the Department*

Sullivan, W. James, B.S., M.D.

*Assistant Professors of Physiology*

Aull, Felice B., A.B., Ph.D.  
Barker, June N., (assigned to Rehabilitation  
Medicine), B.S., A.M., Ph.D.

Moss, Immanuel R., M.D., Ph.D.

*Assistant Professor of Experimental Psychology (assigned to Physiology and Biophysics)*

Kupfermann, Irving, B.S., Ph.D.

*Research Assistant Professor of Physiology*  
Castellucci, Vincent F., A.B., B.S. [Laval],  
Ph.D.

*Instructors in Physiology*

Bicker, Alvin A., B.S. (Phys.)  
Schoultz, Ture W., B.S., A.M., Ph.D.  
Thompson, Elizabeth B., A.B., Ph.D.

*Teaching Assistant in Physiology*

Bowles, Nancy L., A.B.

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*First Year*

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The course in physiology is concerned with applying the principles of physics and chemistry toward an understanding of the living animal. The physiology of the organ systems of the human body is emphasized in preparation for a rational approach to understanding the diseased state. The laboratory is designed to illustrate important physiological principles and the methods for their study. The emphasis in the laboratory is on critical thinking and a rational approach to problems in experimental biology. The major topics are: cellular physiology, nerve and muscle, circulation, respiration, the kidney, metabolism, endocrine glands, and sense organs.

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*Electives*

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Elective work is available by arrangement with the Dean and the departmental chairman.

A.

CURRICULUM VITAE

Emmanuel Alves  
37 Washington Square West  
New York, New York

Born: May 9, 1913  
Marital status: Married  
Nationality: Brazilian - from Belem, State of Para.

Education:

High School: Ginasio Paes de Carvalho and Instituto Superior de Preparatorios, Brazil, 1926-1931.

College: "Pre-medico", Brazil, 1932.

Medical School: Faculty of Medicine of the Fluminense Federal University, Brazil, 1933-1938. Degree: M.D.

Internship &

Residency: Souza Aguiar Hospital (Surgery) 300 beds, 1937-1939 by contest, 3rd place among 95 candidates.

Thesis: "Livre Docencia" in Surgery, 1948. Ruptured ectopic pregnancy: the resume is published "Cirurgia de Urgencia" Volume I, pages 728-750, Emmanuel Alves.

Special Training

Teaching

Techniques: Attended a course of 3 months, full time, in teaching techniques.

Radiology:

Attended a course on Basic Aspects of Radiology, 1955 by Professor Nicola Carminha at Pontificia Universidade Catolica.

Teaching Appointments:

1940-1944: Assistant Professor of Anatomy (Medical Surgical Anatomy), Medical Faculty University of Rio de Janeiro.

1946-1967: Assistant Professor of Anatomy.

1948- Associate Professor of Surgery, Medical Faculty Federal University of Rio de Janeiro

1968-1969: Instructor in Anatomy, New York Medical College

1970-1971: Assistant Professor in Anatomy, New York Medical College

Feb. 1972-Present: Associate Professor in Anatomy, New York University Medical Center

Other Positions Held:

Director - Hospital A.M. Vilaboim, State of Guanabara, Brazil.  
Small Hospital for a suburban community at the vicinity of the city of Rio de Janeiro - since 1964.

Head of group on duty-surgical emergency - Carlos Chagas Hospital - 1942-1943 (300 beds)

Chief of Surgical Clinic - Getulio Vargas Hospital, 1949-1952 (400 beds)

Surgeon of the "Sociedade Beneficiente Espanhola" - 1944-1946, (private clinic).

Courses Given:

1945: Surgical Techniques and Experimental Surgery, Faculty of Medicine of the Federal University of Rio de Janeiro.

1948: Surgical Clinics (Surgical Emergencies), at the Federal University of Rio de Janeiro.

1951: Post-Graduate Course in Medical-Surgical Anatomy for physicians of Getulio Vargas Hospital.

1952: Course of Surgery for medical students.

1961: Anatomy for nurses, Rachel Hadock Lobo School.

Membership in Scientific Societies:

Sociedade Brasileira de Anatomia  
Societe Internationale de Chirurgie (Paris)  
Colegio Brasileiro de Cirurgioes (Full Member)

Honors:

Silver Medal awarded by the Government of the State of Guanabara, for medical services given to the population.

Written statement of merit and thankfulness issued by the Brazilian Minister of War for medical services given to the Brazilian Armed Forces during the Second World War in Brazil.

Praised five times by the Mayor of the Federal District Federal for extraordinary medical services given to the population of the State of Guanabara.

[ DEFENDANT'S EXHIBIT A ]

Publications:

1942 - Principles of Joint Physiopathology.  
Tribuna Medica, July 1942.

1945 - Penicillin - Hora Medica, February 1945.

1945 - Application of bovine serum (aminoacids) in  
Hypoproteinemia and Shock. Hora Medica, August, 1945.

1945 - Infected Lithiasis of Submandibular Gland,  
El Dia Medico Medico Uruguayo, July, 1945.

1948 - Prenhez ectopica Rota (Ectopic pregnancy) - Thesis  
for Livre Docencia (Privatz Docenz) at the Department  
of Surgery, Faculdade de Medicina da Universidade  
Federal do Rio de Janeiro.

1949 - Cirurgia de Urgencia (Emergency Surgery) - Textbook  
in two volumes. Ed. Livraria Ateneu S/A, Rio de Janeiro  
Brazil.

1955 - Invaginacao intestinal (Intestinal Invagination) -  
presented to the Colegio Brasileiro de Cirurgioes.

1956 - Psoite Aguda (Acute Psoitis) - presented to the Colegio  
Brasileiro de Cirurgioes.

1962 - Anatomia Topografica (Topographical Anatomy) - Ed.  
Livraria Ateneu S/A, Rio de Janeiro, Brazil.

1962 - Anatomia Descritiva (Descriptive Anatomy) - Ed.  
Livraria Ateneu S/A, Rio de Janeiro, Brazil.

1962 - Anatomia Odontologica (Odonthological Anatomy)  
Ed. Livraria Ateneu S/A, Rio de Janeiro, Brzail.

1966 - Guia de Anatomia (Anatomy Guide) - Publ. by the  
Department of Anatomy of the Faculty of Medicine  
of the Federal University of Rio de Janeiro, Brazil.

1962 - Emergency Surgery, E. Alves, 4th edition, Publ. by  
Atheneu S/A Rio de Janeiro, Brazil.

1964 - Anatomia Animal (Animal Anatomy) by V. Muedra  
(translation and revision by E. Alves). Published  
by Ibero Americana, Rio de Janeiro, Brazil.

1964 - Atlas de Anatomia Humana (Atlas of Human Anatomy)  
by V. Muedra. (translation and revision by E. Alves).  
Published by Ibero Americana, Rio de Janeiro, Brasil.

1965 - Principles of Human Anatomy and Physiology, 4th Edition  
Published by Rocha Alves Ltd., Rio de Janeiro, Brazil.

CONTRIBUTIONS TO N.Y.U. MEDICAL COLLEGE, DEPARTMENT OF ANATOMY

- 1) Living Anatomy: A 20-page report with 11 photographs, as well as a catalog illustrating and describing various types of projectors - 1968.
- 2) Outline of principal landmarks in radiological anatomy - 1968.
- 3) A glossary of radiological anatomy, 18 pages - 1969.
- 4) A laboratory guide for Gross Anatomy: 43 pages, 13 illustrations 1968.
- 5) The Importance of Radiological Anatomy - Seminar presentation 1969.
- 6) Present position of the Anatomical Museum - Seminar presentation, 1970.

[ DEFENDANT'S EXHIBIT A ]

D.

## CURRICULUM VITAE

James Lewis Shafland

PERSONAL

Born: December 2, 1940, Fort Dodge, Iowa  
Marital Status: Single  
Citizen of: United States  
Social Security No.: 484-46-0359

EDUCATION

Luther College, Decorah, Iowa, B.A., June 1963.  
University of Chicago, Dept. of Anatomy, Ph.D., August 1968.

FELLOWSHIPS, SCHOLARSHIPS AND AWARDS

Academic Scholarship, Luther College, 1959-1963.  
USPHS Traineeship, 1963-1968.  
One of three finalists for teaching award, Duke Medical Center, 1969-1970.  
Award for teaching excellence, Duke Medical Center, 1970-71.

PROFESSIONAL POSITIONS

Assistant Professor, Duke University Medical Center, 1969-present.

RESEARCH INTERESTS

Comparative morphology especially feeding mechanisms.

FIELD WORK AND TRAVEL

European travel visiting museums and university departments 1968-69.

SCIENTIFIC SOCIETIES

Society of Sigma KI (student member); American Society of Ichthyologists and Herpetologists; American Men of Science, 1969-1970.

COURSES TAUGHT

Medical gross anatomy, gross comparative anatomy.

PUBLICATIONS

Functional Anatomy of Suction Feeding in Chelus fimbriata and Pipa pipa.  
Anatomical Record 180 (3):522, 1968. James L. Shafland

With H. Cartmill: Human Structure: A Manual of Gross Human Anatomy.  
(in preparation).

## CURRICULUM VITAE

Faro, Maria Diaz, Ph.D.  
Bus: New York University Medical Center  
560 First Avenue, Room 709 - RR, IRM  
New York, New York 10016

Home: 31-22 77 Street  
Jackson Heights, N.Y.  
11370

Date of Birth: April 17, 1935

Married 1961 to Joaquin Pedro Faro,  
2 children

EDUCATION: University of Puerto Rico, San Juan, B.S. Degree, 1957, in chemistry.

University of Pennsylvania, Institute of Neurological Sciences, Philadelphia, Pa., Ph.D., 1962, in anatomy.

### PROFESSIONAL EXPERIENCE:

1968-1973	Assistant Professor, Experimental Rehabilitation Medicine, New York University Medical Center
1965-1968	instructor, Rehabilitation Medicine, New York University Medical Center
1963-1964	Investigator, Laboratory of Perinatal Physiology, NINDB; NIH; San Juan, P.R.
1958-1962	Pre-doctoral Trainee, Institute of Neurological Sciences, University of Pennsylvania
1957-1958	Medical Biological Technician, Laboratory of Perinatal Physiology, NINDB; San Juan, P.R.

### PROFESSIONAL SOCIETIES:

American Association for the Advancement of Science	- 1967
American Association of Anatomists	- 1967
Cajal Club	- 1967
Association of Women in Science	- 1971
International Society for Neurochemistry	- 1971
Association for Laboratory Animal Science	- 1972
American Congress of Rehabilitation Medicine	- 1971

### TEACHING EXPERIENCE

1961 - Gross Anatomy ( dental )	University of Pennsylvania, Philadelphia, Pa.
1970 - Gross Anatomy (medical)	New York University, New York, N.Y.
1971 - Gross Anatomy (medical)	New York University, New York, N.Y.
1972 - Gross Anatomy (medical)	New York University, New York, N.Y.
1971 - Medical Spanish,	New York University, New York, N.Y.
1972 - Medical Spanish,	New York University, New York, N.Y.
Collaborated in the preparation of a book entitled, "Medical Spanish, an integrated approach", for history taking of Spanish speaking patients.	

ADMINISTRATIVE EXPERIENCE:

1965-1967      Organization and direction of the primate colony at the Institute of Rehabilitation Medicine, New York University Medical Center. (200 monkeys).

1965-1970      Organization and direction of a colony of 100 rhesus breeders to produce pregnancies of known gestational age.

1968-1970      Organization and direction of a Neurochemistry laboratory at the Institute of Rehabilitation, New York University Medical Center

1970      Organization and direction of a Behavioral Laboratory for the study of mental retardation in monkeys.

1968      Organization and direction of laboratory on fetal physiology.

1968      Organization and direction of operating facilities for primate surgery.

RESEARCH EXPERIENCE:

	Subject	Position	Date
1)	A method to produce a neuron-free population of neuroglia cells.	Predoctoral Trainee	1960-1961
2)	Lactic dehydrogenase isozymes in a neuron-free population of neuroglia cells and in the cortex of the cat.	Predoctoral Trainee	1961-1962
3)	Tumors produced by inoculation of newborn infant rhesus monkeys by the Rous Sarcoma Virus.	Associate Investigator	1963
4)	Measurement of cerebral blood flow in the rhesus monkey.	Associate Investigator	1963
5)	Mitigation of brain damage by infusion of alkali and glucose in asphyxiated newborn monkeys.	Participating Investigator	1963

6)	Mitigation of brain damage by hypothermia and alkali and glucose infusion.	participating investigator	1963
7)	Cerebral blood flow in the neonatal rat by $^{131}$ antipyrine.	associate investigator	1965
8)	Functional adaptation with time to the brain damage of asphyxia neonatorum.	principal investigator	1965-1967
9)	Transneuronal degeneration in brains of monkeys surviving asphyxia for over 10 years.	principal investigator	1966-1969
10)	Memory deficit in brains of monkeys surviving birth asphyxia for over 10 years.	principal investigator	1968-1969
11)	Metabolic maturation of the brain and its relation to birth asphyxia.	principal investigator	1968
12)	Distribution of cytochrome oxidase activity in the brain of the newborn monkey.	principal investigator	1969
13)	Two color object discrimination in monkey brain damaged at birth.	principal investigator	1970
14)	Form generalization in monkeys asphyxiated at birth.	principal investigator	1970
15)	Study of retention in monkeys asphyxiated at birth as measured by the delayed response technique.	principal investigator	1970
16)	Maturational changes in the electroencephalogram of monkeys asphyxiated at birth.	principal investigator	1970

[ DEFENDANT'S EXHIBIT E ]

17)	Metabolism of biogenic amines in the monkey with spinal cord transection.	Co-investigator	1970
18)	Incorporation of S <sup>35</sup> methionine in the brain of the premature and full term monkey fetuses.	Co-investigator	1970
19)	Factors in the resuscitation of the asphyxiated newborn monkeys.	Principal Investigator	1970

[ DEFENDANT'S EXHIBIT E ]

Faro, M. D.: "Studies on Neuroglia", Doctoral Dissertation, University of Pennsylvania, Pa., 1962.

Faro, M.D.: Lactic dehydrogenase activity in neuron-free spinal cord tissue obtained by a new method. Expt. Neurol. 20:233-244, 1967

Faro, M.D.: Progressive degenerative changes in brains of rhesus monkeys surviving neonatal asphyxia. Anat. Record 157:243, 1967.

Faro, M.D., Windle, W. F.: Progressive degenerative changes in brains of monkeys surviving neonatal asphyxia, pp. 24-27. In "Brain damage in the fetus and newborn from hypoxia or asphyxia". Ross Labs., Columbus, Ohio, 1967.

Faro, M.D., Windle, W. F.: Transneuronal degeneration in brains of monkeys asphyxiated at birth. Exptl. Neurol. 24:38-53, 1969.

Faro, M.D.: Metabolic maturation of the brain in relation to asphyxia neonatorum. Proc. Second International Meeting of the International Society for Neurochemistry. Milan, Italy, p. 166, September, 1969.

Faro, M.D.: Distribution of cytochrome oxidase in the fetal monkey brain at term. Transactions of the American Society for Neurochemistry. Hershey, Pa., page 69, March, 1971.

Faro, M.D., Nishizaki, H.: Electrical brain activity of monkeys asphyxiated at birth. Anat. Record, 169, p. 313, 1971.

Sechzer, J.A., Faro, M.D., Barker, J. N., Barsky, D., Gutierrez, S. and Windle, W.F.: Developmental behaviors: Delayed appearance in monkeys asphyxiated at birth. Science, Vol. 171, pp. 1173-1175, March, 1971.

Faro, M.D., Barsky, D., Windle, W. F., Barker, J. N., Gutierrez, S., Sechzer, J.: Breeding and perinatal care for caesarean-delivered rhesus monkeys. Presented at the 22nd annual session American Association for Laboratory Animal Science, October 12, 1971.

Sechzer, Jeri A., Faro, M.D., Windle, W. F.: Studies of monkeys asphyxiated at birth: Implications for minimal cerebral dysfunction. Seminars in Psychiatry. Vol. V, 19-34, 1973.

continued

[ DEFENDANT'S EXHIBIT E ]

PUBLICATIONS - 2

Faro, M.D.: Maturation and aging in monkeys asphyxiated at birth: behavioral, physiological and structural observations. *Progress in Brain Research*, Vol. 40, 1973.

Faro, M.D.: Barksy, D., Windle, W. F., Barker, J. N., Gutierrez, S. and Sechzer, J.: Breeding and perinatal care of monkeys brain-damaged at birth. Submitted to Biologia Neonatorum, 1973.

[ DEFENDANT'S EXHIBIT E ]

N.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
SOCIAL AND REHABILITATION SERVICE  
WASHINGTON D.C. 20201

June 17, 1968

Howard A. Rusk, M.D.  
Project Director  
Rehabilitation Research and Training Center  
Institute of Rehabilitation Medicine  
New York University Medical Center  
400 East 34th Street  
New York, N.Y. 10015

Dear Dr. Rusk:

At the most recent meeting of the National Advisory Council on Vocational Rehabilitation on May 8-9, 1968, a careful evaluation was made of research projects being conducted by Medical Rehabilitation Research and Training Centers. In this regard, sixteen (16) of the New York University Center projects as listed on the enclosed sheet either contained no statement of significance to rehabilitation, were considered as not having direct relevance to the field of rehabilitation or were service programs with no research components. Accordingly, it was recommended that these projects be deleted from future Research and Training Center budgets unless some reasonable relationship to rehabilitation can be shown to warrant their continuance. While the merits of these projects were not in question, it was felt that their support should more appropriately be carried by other granting agencies.

Cordially,

Joseph Fenton, Chief  
Research and Training  
Centers Division

Enclosure

6/24 per Jack. SRS unit recons. on justifications  
for deletion of projects

[ DEFENDANT'S EXHIBIT N ]

NEW YORK UNIVERSITY (RT-1)

PROJECTS WITH NO REHABILITATION SIGNIFICANCE REPORTED

1. The Breeding Program in Macaca Mulatta - Maria Faro, Ph.D.
2. Dysautonomia in Children with Spina Bifida and Myelomeningocele - C. Swinyard, M.D.
3. Myeloid Hyperactivity in Monkeys Innoculated with Human Leukemic Blood - J. S. Munroe, M.D., Ph.D.
4. Progesterone Effective as an Immunosuppressant Agent - J. S. Munroe, M.D., Ph.D.
5. Studies of Viral Oncogenesis - J. S. Munroe, M.D., Ph.D.
6. Nephritis and Brain Atrophy in Monkeys receiving Chicken Sarcoma Virus - J. S. Munroe, M.D., Ph.D.
7. Effects of Hypoxia and Altitude on Circulation - E. H. Bergofsky, M.D.
8. Studies of Dysautonomia in Human Spina Bifida and Myelomeningocele - C. A. Swinyard, M.D.
9. A Radiographic Study of the effect of Trypan Blue on Rat Embryo Neural Tube Cell Generation Time - C. A. Swinyard, M.D.
10. Functional Adaptation to Progressive Degenerative Changes within Brain - W. P. Windle, Ph.D.

PROJECTS REPORTED WITH QUESTIONABLE REHABILITATION SIGNIFICANCE

1. International Epidemiology of Vascular Disease - Menard Gertler, M.D.
2. Perinatal Vascular Causes of Neonatal Atelectasis and Cerebral Injury - June Barker, Ph.D.
3. Foreign and United States Interns in Community Hospitals - Howard A. Rusk, M.D.
4. Coagulation Profile of Ischemic Vascular Disease - Menard Gertler, M.D.
5. Ultrastructure of the Developing Nervous System - J. Rosenbluth, M.D.

[ DEFENDANT'S EXHIBIT N ]

SERVICE PROJECTS (WITH NO RESEARCH ELEMENTS)

1. Specialized Placement of the Severely Physically Handicapped -  
H. S. Siegel.

[ DEFENDANT'S EXHIBIT N ]

HEW

RTI

October 30, 1963  
RT-1 (C/7)

Dear Dr. Fenton:

This is to acknowledge your letter of October 17, 1963.

We will phase out the research projects which the National Advisory Council on Vocational Rehabilitation feel are not appropriate activities for support under RT-1. In some instances, this could be done immediately; in others, it will take a few months.

Sincerely,

Howard A. Rusk, M.D.  
Director

Dr. Joseph Fenton  
Chief  
Research and Training Centers Division  
Social and Rehabilitation Service  
Department of H. E. W.  
Washington, D.C. 20201

[ DEFENDANT'S EXHIBIT N ]



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
SOCIAL AND REHABILITATION SERVICE  
WASHINGTON, D.C. 20201

October 17, 1968

Howard A. Rusk, M.D.  
Project Director  
New York University Rehabilitation  
Research and Training Center  
400 East 34th Street  
New York, N. Y. 10016

Dear Dr. Rusk:

The recent Research and Training Center grant award letter indicated that we would write to you directly about specific research projects reported in the continuation grant application. This refers to the data submitted to justify the continuation of Research and Training Center support of the attached research projects which, as you will recall, were previously judged as not having direct relevance to the field of rehabilitation (See attached list). A careful review and evaluation of the material was made by the Medical Sub-committee and the National Advisory Council on Vocational Rehabilitation at its meeting on October 10-11, 1968.

While, the National Advisory Council recognized the outstanding technical and scientific merits of the projects, they still questioned the appropriateness of utilizing Research and Training Center funds for their support. The Council, therefore, recommended that Research and Training Center funding of these projects be phased out at the earliest possible time in favor of funding through more appropriate resources. This was felt to be especially important in light of budgetary restraints which presently exist.

The Council is hopeful that the Research and Training Center will continue to demonstrate its excellent capabilities in the programmatic research rehabilitation areas it has been successful with in the past.

If you have further questions pertaining to this matter, please let us know.

Kindest regards,

Cordially,

Joseph Fenton, Chief  
Research and Training  
Centers Division

[ DEFENDANT'S EXHIBIT N ]

October 1, 1971

M E M O R A N D U M

TO : Ivan L. Bennett, Jr., M.D.  
Dean

FROM : Howard A. Rusk, M.D.  
Professor and Chairman

RE : Maria Faro, M.D.

I have reviewed the subject matter of the attached correspondence with Doctor Faro who has requested reconsideration for the following reasons:

Doctor Faro would prefer transfer from the Department of Rehabilitation Medicine to the Department of Anatomy (assigned to Rehabilitation Medicine) so as to permit acceptance of graduate students who have applied for training under her direction.

This is a realistic request since her active participation in Anatomy is already factual and the implementation of a graduate program has only been impeded because she is not officially a member of the basic science Department. As you know, anatomy has been and is currently contributing to her financial support. Doctor Goodgold as my representative has discussed this matter with Doctor Prutkin of the Anatomy Department and reports an enthusiastic endorsement of the proposed change.

I would like to recommend such a change as an appropriate and logical one and would appreciate your favorable action.

I would be glad to discuss this matter at your convenience.

Enc.

HAR:hh

[ DEFENDANT'S EXHIBIT V ]

W.

Tenured Faculty in the Dept. of Rehab. Med. & Registered Dietit. Med.

	Date of Faculty App't. and Current Title	Date Tenure Received
Barber, Augusta Associate Professor of Clinical	7/1/57 9/1/70	9/1/71
Brach, Joan Associate Professor of Clinical	7/1/63 9/1/70	9/1/70
Bratt, Donald Professor	11/19/47 11/1/57	7/1/54
Clay, Leonard Professor of Clinical	7/1/56 7/1/72	7/1/65
Protein, Arthur Professor of Research	7/1/64 9/1/73	9/1/71
Matthew, Leonard Professor of Experimental	7/1/58 11/1/66	7/1/62
Edgold, Joseph Professor	5/1/54 7/1/68	11/1/67
Vernepan, Leon Professor of Clinical	4/1/53 7/1/72	7/1/65
Wynbaum, Bruce Professor of Clinical	3/1/50 7/1/68	7/1/70
Albert, Albert Professor of Experimental	11/1/56 7/1/71	7/1/66
Watanayoshi Associate Professor of Clinical	7/1/59 9/1/70	7/1/70
Water, Nancy Associate Professor	9/1/63 12/1/68	9/1/70
Thorn, M. L. Professor of Clinical	12/1/64 9/1/73	9/1/72
Woman, Edward Professor	1/15/51 7/1/62	7/1/57

name	Date of Faculty App't. and Current Title	Date Tenure Recomm
Rust, Howard Professor & Chairman	9/1/46 9/1/46	9/1/49
Russek, Allan Professor of Clinical	10/15/49 7/1/71	7/1/58
Sarno, John Professor of Clinical	7/1/63 9/1/73	9/1/72
Sokolow, Jack Professor of Clinical	4/1/57 7/1/73	7/1/68
Turley, Chester Professor	7/1/58 7/1/66	7/1/58
Whittle, Howard Associate Professor of Clinical	7/1/66 9/1/71	9/1/72
Wiesen, Aaron Associate Professor of Clinical	1/1/65 9/1/70	9/1/73
Wengleff, Edward Professor of Physiology & Biophysics	4/1/62 9/1/73	2/1/69
Reich, Theodore Professor of Experimental Surgery	2/1/60 9/1/72	9/1/72
Paranblith, Jack Professor of Physiology & Biophysics	8/1/66 12/1/71	8/1/66

[ DEFENDANT'S EXHIBIT W ]

February 2, 1971

Memo To: Dr. Jacobus Potter  
Associate Dean

From: Chauncey H. Chow  
Department of Cell Biology

Re: Confirming our previous discussion in regard to the Cell Biology temporary teaching appointments for the Gross Anatomy course, the following information is provided for your reference:

(1) As I mentioned to you when you were in my office, that the approved budget for the academic payroll for the fiscal year 1970-71 for the Department of Cell Biology is \$133,458. of which \$9,313. was reallocated to cover portion of the salary for one departmental technician and one departmental secretary. This budget request for transfer was processed on January 6, 1971. The approved budget for the academic payroll is therefore reduced to \$129,137.

(2) The total obligated salary commitment for all academic personnel for this fiscal year is \$85,150, leaving an unused balance of \$43,987 as of this date.

(3) The following personnel will be appointed for the teaching of the Gross Anatomy course beginning March 1, 1971 through the end of this fiscal year i.e. August 31, 1971.

Dr. Maria Faro .....	\$8,000
Dr. Edward Reith.....	7,000
Dr. Louis Bergmann.....	7,000
Dr. Emmanuel Alves.....	7,000
Dr. Herbert Weisberg.....	<u>5,000</u>
Total	\$34,000

[ DEFENDANT'S EXHIBIT X ]

(4) The total retroactive compensation for Dr. Michael Ross in assuming the responsibility of Acting Chairman of the Department is \$12,000. However, Dr. Ross has agreed to be compensated a total of \$6,000 to be paid through this fiscal years budget and the remaining \$6,000 to be paid from the department budget for the fiscal year 1971-72. It is also agreed that we will budget Dr. Ross' salary in the amount of \$6,000 for the fiscal year 1971-72 when it is prepared.

(5) The total amount obligated for teaching the Gross Anatomy course for this fiscal year comes to \$40,000 which leaves an unused balance of \$3,987. as of August 31, 1971 with the additional \$6,000 to be provided in the 1971-72 department budget.

Notices of Faculty Recommendation forms reflecting the above changes are being processed. I hope the above arrangement meets with your approval.

Enclosed are copies of the above recommendations for 1971-1972.

(2) The total obligated salary amount for all faculty for fiscal year 1971-72 is \$77,100, leaving an unused balance of \$43,100 as of this date.

(3) The following recommendations will be implemented for  
CC: Dr. Michael Ross  
Dr. Edward Johnson  
Dr. Louis Goldstein  
Dr. John W. Johnson  
Dr. Robert L. Johnson

Dr. John W. Johnson	\$12,000
Dr. Edward Johnson	7,000
Dr. Louis Goldstein	7,000
Dr. John W. Johnson	7,000
Dr. Robert L. Johnson	7,000

[ DEFENDANT'S EXHIBIT X ]



# NEW YORK UNIVERSITY

School of Medicine

550 FIRST AVENUE, NEW YORK, N.Y. 10016  
AREA 212 679-3200

Department of Cell Biology

September 14, 1973

Memo To: Dr. Jacobus Potter &  
Dr. David Sabatini

From: Chauncey H. Chow

The following is a revised statement of teaching of the Gross Anatomy courses as previously requested, including Dr. Maria Diaz Faro.

## 1. Course in the Fall of 1970

### a) Primary Faculty Personnel:

Name	Academic Title
Dr. Lawrence Prutkin	Assistant Professor of Cell Biology
Dr. Bruce Bogart	Assistant Professor of Cell Biology
Mrs. Mary Alice Cunningham-Rundles	Assistant Professor of Cell Biology

### b) Part-time instructors from Department of Surgery:

Name	Academic Title	Amount of Compensation
Dr. Richard Kessler	Clinical Ass't Prof. of Surgery	\$7,150*
Dr. Donald Mayer	Instructor of Surgery	4,000
Dr. Glen Sisler	Clinical Instructor of Surgery	3,500
Dr. Eugene Thiessen	Clinical Instructor of Surgery	4,000
Dr. Benjamin Shafiroff	Assoc. Prof. of Clinical Surgery	4,750

## 2. Course in the Spring of 1971

### a) Primary Faculty Personnel:

Name	Academic Title
Dr. Michael Ross	Associate Professor of Cell Biology
Dr. Lawrence Prutkin	Assistant Professor of Cell Biology
Mrs. Mary Alice Cunningham-Rundles	Assistant Professor of Cell Biology

### b) Part-time instructor from Department of Rehabilitation Medicine

Name	Academic Title	Amount of Compensation
Dr. Maria Diaz Faro	Ass't Prof. of Exp. Rehab. Med.	\$8,000

### c) Part-time instructors from New York Medical College:

Name	Academic Title	Amount of Compensation
Dr. Edward Reith	Visiting Professor	\$7,000
Dr. Herbert Weisberg	Visiting Assoc. Professor	5,000
Dr. Louis Bergmann	Visiting Professor	7,000
Dr. Emmanuel Alves	Visiting Assistant Professor	7,000

[ DEFENDANT'S EXHIBIT Y ]

3) Course in the Fall of 1971

a) Primary Faculty Personnel:

<u>Name</u>	<u>Academic Title</u>
Dr. Lawrence Prutkin	Associate Professor of Cell Biology
Dr. Bruce Bogart	Assistant Professor of Cell Biology
Mrs. Mary Alice Cunningham-Rundles	Assistant Professor of Cell Biology

b) Part-time instructors from Department of Surgery:

<u>Name</u>	<u>Academic Title</u>	<u>Amount of Compensation</u>
Dr. Richard Kessler	Clinical Ass't Prof. of Surgery	\$7,508*
Dr. Donald Mayer	Instructor of Surgery	4,200
Dr. Victor Zerbino	Clinical Instructor of Surgery	3,500
Dr. Eugene Thiessen	Clinical Instructor of Surgery	4,200

c) Part-time instructor from Department of Rehabilitation Medicine

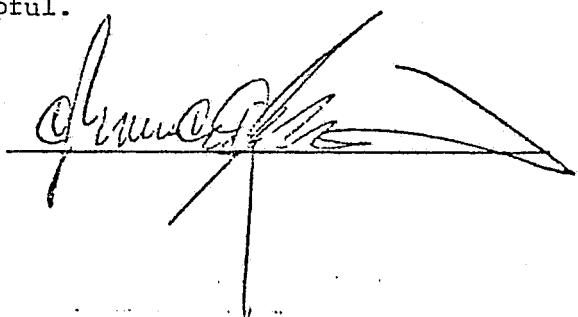
<u>Name</u>	<u>Academic Title</u>	<u>Amount of Compensation Per Annum</u>
Dr. Maria Diaz Faro	Assistant Prof. of Exp. Rehab. Medicine	\$16,800

d) Part-time teaching assistants:

<u>Name</u>	<u>Title</u>	<u>Amount of Compensation</u>
Dr. David Liebling	Teaching Ass't of Cell Biology	\$5,000
Mr. Jeffrey Mitchell	Laboratory Ass't of Cell Biology	801

The above information is provided in accordance with our departmental records. I hope they are helpful.

CC: Dr. Lawrence Prutkin  
Ms. Desai



\* This amount paid to Dr. Kessler reflects the fact that he had a double teaching load.

[ DEFENDANT'S EXHIBIT Y ]

## Electives

A student may do work of his own choosing in his free time in any year, subject to the approval of the Dean. Students may, at the discretion of the faculty, elect to interrupt their regular course of study any time after the first year in order to pursue individual work in one of the departments of the medical school.

Through a reorganization of the curriculum, elective time has been made available, in the second year, to study aspects of medical science that interest the student. In this effort, the student has the guidance of faculty preceptors and the Dean's office who help him focus on problems and on reasonable approaches to their solution. In the fourth year, a period of four months is provided in the regular curriculum for the student to work in an area of his own choosing, at the medical school or in its affiliated hospitals, or at another institution, American or foreign.

The senior year may be used by selected students in a highly flexible way. With appropriate scheduling of clerkships in the summer vacation between the second and third year, a student may free as much as forty-two weeks of elective time in continuity in his senior year. The time can also be used as a solid block for elective work extending from midway in the third to midway in the fourth year of medical school. These students graduate with their regular class, having devoted a substantial portion of their four-year course of study to original investigative work in the basic sciences or at the clinical level. (See section on Medical Science Year Fellows and Intracurricular Fellows, page 41.)

During the second and third years students meet with the Dean, or with an appropriate departmental representative, to arrange for elective work. Students interested in special work are urged to consult with a member of the faculty, or with the Dean, at any time.

9

### *Medical Spanish Language Elective*

An elective course in Medical Spanish is available. Although the course is primarily designed for second-year students, it is also available to students of other classes. This course is designed to integrate: (1) Spanish language capability; (2) the role of cultural factors in health and disease, and (3) consideration of basic mechanisms of disease.

The Spanish language teaching syllabus is based on generative-transformational concepts, using audiolingual methods. Class teaching is supplemented by taped material.

The role of cultural factors in illness is emphasized. Background material related to health problems in the Puerto Rican community in New York City is introduced to illustrate the role played by these factors in health and disease and so, by analogy, to illuminate the role of these factors in the student's own culture.

This course also serves as an introduction to medical interviewing and to the role of the medical history in clinical judgment. An attempt is made to stimulate an understanding of the relationship between basic mechanisms of disease and symptoms as expressed by patients. Mathematical models applicable to the analysis

of case histories and to clinical judgment are discussed. Independent reading is encouraged.

The course is based on the proposition that effective communication between doctor and patient is a crucial element in the provision of medical care. Since language is only one aspect of this communication, the course additionally attempts to foster an enhanced awareness of other relevant aspects through role-playing, discussion groups, reading of cross-cultural material, critiques of patient interviews, etc.

The course is taught in small groups in the out-patient department and in the emergency room of Bellevue Hospital and is based mainly on patient interviews, conducted under supervision. The course is taught in three two-hour sessions per week and lasts for three months.

The program is associated with the Division of Urban Health Affairs.

### History of Medicine

Adrian W. Zorgniotti, M.D., *Principal Lecturer*

A series of six to eight lectures on selected topics in the history of medicine will be given each year. The emphasis is on the historical evolution of medicine. In the course of four years it will provide the student with a background for understanding certain basic philosophic assumptions and scientific theories on which modern medicine is based.

### The Honors Program

Medicine advances at an extraordinary pace; its frontiers today lie on what formerly was the exclusive domain of the basic sciences. The impact of these advances cannot be fully appreciated by the student who restricts his education exclusively to the minimal course requirements, nor are the minimal courses in basic sciences a suitable background for students who intend to pursue an academic career. Therefore it is necessary for the medical school to provide a way for interested students to become familiar with basic science in greater depth than through formal class lectures and laboratories. To fulfill these needs, the New York University School of Medicine in 1956 developed an Honors Program with sufficient flexibility to permit students to supplement their formal classwork in the light of their individual long-range objectives. Through the Honors Program it is possible for the student to choose a program commensurate with his own interests and capacity.

Participation in the Honors Program is completely voluntary. Constantly improved on the basis of suggestions from both the faculty and the student body, the program is designed to help the student find his proper place in medicine. Attendance or nonparticipation in no way affects his standing in the class. Through the Honors Program it is possible for a student to spend approximately 25 percent of his time during his four years in medical school in a laboratory of his own choosing under the guidance of a member of the senior faculty or in learning in depth some branch of basic science. Such a program is easily arranged in New York University School of Medicine.

**Research Assistant Professors**

Day, Loren A., A.B., Ph.D.  
Tzagoloff, Alexander A., A.B., Ph.D.

**Instructor (assigned to Orthopedic Surgery)**

Strider, William E., A.B., M.S., Ph.D.

**First Year**

**Lectures**—Four hours a week. Biochemistry is discussed as a basic biological science, emphasizing its relations to other medical disciplines (physiology, pharmacology, microbiology, genetics, molecular biology) and its significance and application in medicine.

**Laboratory**—A basic laboratory course is presented during the first six weeks, for six hours once a week. Attention is given to the basic qualitative and quantitative analytical techniques and the performance of experiments illustrating the chemical dynamics of the cell and the role and properties of enzymes. This is followed for the balance of the semester by a series of elective experiments of a more advanced nature. Problems in metabolism, the properties of enzymes, molecular biology, and molecular genetics are examined utilizing modern methodology. This work is carried out in small, supervised groups.

**Conferences**—Two hours a week for group discussion of elementary lecture and laboratory material.

**Electives**

P

Opportunity is offered to a limited number of highly qualified students to work in the laboratories during their elective periods. Arrangements should be made with the Dean and the departmental chairman.

**Cell Biology**

**Professor and Chairman**

Sabatini, David D., Doc. en Med. [Litoral], Ph.D.

**Associate Professors**

Prukin, Lawrence, B.S., A.M., Ph.D.  
Rabinovitch, Michel P., Doc. em Med. [São Paulo]

**Adjunct Associate Professor**

Alves, Emmanuel, M.D. [Fluminense]

**Assistant Professors**

Adesnik, Milton B., B.S., Ph.D.

Benjamin, Thomas L., A.B., Ph.D.  
Black, Virginia H., A.B., A.M., Ph.D.  
Bogart, Bruce L., A.B., Ph.D.  
Cunningham-Rundles, Maryalice, A.B.  
Kreibich, Gert, Dip. Chemiker, Dr. rer. nat. [Heidelberg]  
Lake, James A.  
Rubinson, Kalman, A.B., Ph.D.

**Instructors**

DeLemos, Carmen L., A.B., M.S., Ph.D.  
Lande, Mauricio A.  
Lorenc, Mary J.  
Robbins, Edith S., A.B., M.S., Ph.D.  
Yu, Wan-hua Amy, B.S. [Tunghai], M.S., Ph.D.

**First Year**

**Cell Biology**

A series of lectures on mammalian cells, tissues, and organs. Structure at all levels of resolution is related both to general cell functions and to differentiated functions. Laboratory two and one-half hours, twice weekly. Examination of microscopic structure of cells and tissues.

**Gross Anatomy**

Lectures and laboratory demonstrations. Films, slides, and photographs are available for individual study. Anatomical structure is correlated with clinical problems and wherever possible structure and function are related.

**Second Year**

**Neurosciences**

Three lectures and one laboratory-demonstration per week. The functional organization of the central and peripheral nervous system is presented from combined structural, physiological, and clinical approaches. Gross dissection, microscopic slides, electrophysiological demonstrations, X rays, and clinical presentations are utilized. Clinical correlations are emphasized.

**Dermatology**

*George Miller Mackee Professor and Chairman of the Department*

Baer, Rudolf L., M.D. [Frankfurt], M.D. [Basel]

**Professors**

*Professor of Clinical*

Derby, Bennett M., A.B., M.D.

*Associate Professors*

Hochwald, Gerald M., A.B.; M.D. [Leiden]  
Quartermain, David (Neurology and  
Physiology), A.B., A.M.  
[Canterbury], Ph.D. [New Zealand]  
Samuels, Stanley (Experimental), A.B.,  
M.S., Ph.D.

*Associate Professor of Clinical*

Goodgold, Albert L., A.B.; M.D. [Bern]  
Jonas, Saran, B.S., M.D.  
Reuben, Richard N. (assigned to Pediatrics),  
A.B., M.D.

*Clinical Associate Professors*

Block, Jerome M., A.B., M.D.  
Flicker, David J., B.S., M.D.  
Freiman, Israel S., B.S., M.D.  
Tarlau, Milton, M.D.

*Assistant Professors*

Blizard, David A., A.B., Ph.D. [Wales]  
Fish, Irving, B.S. [McGill], M.D.  
[Dalhousie]  
Freedman, Lewis S., A.B., A.M., Ph.D.  
Lieberman, Abraham, A.B., M.D.

*Assistant Professor of Clinical*

Shappell, Arthur W., A.B., M.D.

*Adjunct Assistant Professor*

Kay, William J., B.S., D.V.M.

*Adjunct Assistant Professor of Clinical*  
(assigned to Rehabilitation Medicine)

Marks, Morton, A.B., M.D.

*Clinical Assistant Professor (assigned to*  
Rehabilitation Medicine)

Fischer, Boguslav H., Lekarz, M.D.  
[Poznan]

Rosenblum, Jay A., A.B., M.D.

*Instructor*

Colantuono, Frank, B.S., M.S.; M.D.  
[Bologna]

*Clinical Instructors*

Donnenfeld, Hyman, B.S. [McGill], M.D.  
[Ottawa]

Lopez, Jorge E., M.D. [San Carlos]

Suhl, Michael, A.B., M.D.

*Second Year*

Neuroanatomy and neurophysiology are  
taught in collaboration with an  
interdepartmental group.

*Third Year*

*Clinical Neurology*

Groups of ten students serve as clinical  
clerks on the Bellevue and New York  
Veterans Administration Hospitals  
neurology wards for a period of two weeks.  
They take histories and perform physical and  
neurological examinations under the  
supervision of a tutor. One-hour seminars in  
neurosurgery and neuroradiology are  
conducted by faculty members each week.  
Students attend at least four scheduled staff  
conferences including basic neurologic  
science seminars during the clerkship.

*Fourth Year*

Electives for one- to four-month periods may  
be arranged during which students may  
devote all or part time to clinical neurology  
on the wards and in the clinics. Individual  
programs may be planned with opportunities  
for participation in clinical or laboratory  
research projects. Elective work is available  
by arrangement with the Dean and the  
departmental chairman.

*For courses in neurology offered by the Post-  
Graduate Medical School, see page 105.*

**Neurosurgery**

*Professor and Chairman of the Department*

Ransohoff, Joseph, B.S., M.D.

*Professor*

Battista, Arthur F., B.S., M.D., C.M.  
[McGill], M.S. [Western Ontario], A.M.

*Professor of Clinical*

Rovit, Richard L., M.S. [McGill], M.D.

*Research Professor*

Campbell, James B., A.B., M.D.

*Associate Professor of Clinical*

Benjamin, M. Vallo, M.D. [Teheran]

*Assistant Professors*

Epstein, Fred J., A.B., M.D.

Flamm, Eugene S., A.B., M.D.

Kakari-Dimitriou, Sophia (Experimental)

Weiss, Joseph F. (Experimental)  
(Biochemistry), B.S., M.S., Ph.D.

*Assistant Professors of Clinical*

Leventhal, Harvey, A.B., M.D.

with radiation techniques, but rather the student is given as much experience as possible with all forms of malignant disease during his time. The examination of the cancer patient and the role of other methods including surgery and chemotherapy are considered. (2) The basic scientific principles of radiation therapy. In this case, the major part of the student's time is devoted to a research project in radiobiology, radiation physics, or some other branch of clinical medicine insofar as it pertains to the radiotherapy of cancer. Concurrently, however, exposure to the problem of the clinical management of the cancer patient is offered.

## Rehabilitation Medicine

### *Howard A. Rusk Professor and Chairman of the Department*

Rusk, Howard A., A.B., M.D.; (hon.) Sc.D.; D.H.C., L.H.D., Litt.D., LL.D.

#### *Professors*

Covalt, Donald A., B.S., M.D.  
Gertler, Menard M. (Experimental), A.B., [Saskatchewan], M.S., M.D., C.M. [McGill], Med.Sc.D.

Goodgold, Joseph, A.B., M.D.  
Haas, Albert (Experimental), M.D. [Budapest]

Lowman, Edward W., B.S., M.D., M.S. (Med.)

Swinyard, Chester A., B.S., M.S., Ph.D., M.D.

#### *Professor of Physiology (assigned to Rehabilitation Medicine)*

Rosenbluth, Jack, A.B., M.D.

#### *Professor of Biomechanics*

\*Tichauer, Erwin R., Dip. Ing. [Danzig], Dr. rer. nat. [Konigsberg]

#### *Professors of Clinical*

Diller, Leonard, B.S., A.M., Ph.D.  
Greenspan, Leon, A.B., M.D.  
Grynbaum, Bruce B., M.D.  
Russek, Allen S., A.B.; L.R.C.P.S. [Edinburgh, Glasgow]

#### *Research Professor*

Gomez-Gimeranez, Domingo M., Lic. des Scien. Math., Doc. en Med. [Paris]

#### *Adjunct Professors*

Moskowitz, Eugene, B.S.; M.D. [Basel]  
Taylor, Eugene J., B.S. (Educ.), A.M.; L.H.D., LL.D.

#### *Clinical Professor*

Sverdlik, Samuel S., B.S., M.D.

#### *Associate Professors*

Eberstein, Arthur, B.S., M.S., Ph.D.  
Kester, Nancy C., A.B., M.S. (Physiology), M.D.

Lee, Mathew H., A.B., M.D., M.P.H.  
Naftchi, Nosrat E., A.B., M.S., Ph.D.

Sarno, John E., Jr., M.D.

#### *Associate Professor of Physiology (assigned to Rehabilitation Medicine)*

Bergofsky, Edward H., B.S., M.D.

#### *Associate Professors of Clinical*

Alba, Augusta S., B.S., M.D.  
Bardach, Joan L. (Psychology), A.B., A.M., Ph.D.

Itoh, Masayoshi, M.D. [Tokyo], M.P.H.  
Rothman, Leon M., M.B., M.D.  
Sokolow, Jack, B.S.; Dr. med. [Geneva]  
Thistle, Howard G., M.D. [Dalhousie]  
Weiss, Aaron J. (Psychology), A.B., M.H.L., Ph.D.

#### *Associate Professor of Clinical Surgery (assigned to Rehabilitation Medicine)*

Reich, Theobald, A.B., M.D.

#### *Research Associate Professors*

Faro, Maria D.  
Munroe, J. Spencer, A.B.; Ph.D., M.D. [Toronto]

#### *Clinical Associate Professors*

Badell-Ribera, Angeles, Lic. en Med. y Cir. [Barcelona]

Dietz, J. Herbert, Jr., A.B., M.D.  
Friedman, Gerald J., B.S., M.D.

Ginzburg, Meyer, Mag. Fil., Physician, M.D. [Wilno]

Jaramillo, Selene, M.D. [Rome]

Kristeller, Edith L., M.D.

Lanyi, Valery F., M.D. [Budapest]

Liao, Sung J., M.D. [Yale-in-China]

Ribera, Victor A., Lic. en Med. y Cir. [Barcelona]

Trainor, Frieda S., B.S., A.M., Ph.D.

#### *Clinical Associate Professor of Medicine (assigned to Rehabilitation Medicine)*

Brandaleone, Harold, B.S., M.D., Med. Sc.D.

#### *Assistant Professor*

Spielholz, Neil I. (Research), B.S., A.M., R.P.T.

\*Primary appointment, The Center for Safety, School of Continuing Education.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIA DIAZ FARO,

Plaintiff, :

OPINION

-against- :

73 Civ. 3769 (KTD)

NEW YORK UNIVERSITY, :

Defendant. :

## APPEARANCES:

BELLAMY, BLANK, GOODMAN, KELLY,  
ROSS & STANLEY, ESQS.  
Attorneys for Plaintiff  
BY Diane Blank, Esq.  
Nancy Stanley, Esq.  
OF Counsel

WILLIAM C. FORTH, ESQ.  
Attorney for Defendant  
Katherine B. Decai, Esq.  
OF Counsel

KEVIN THOMAS DUFFY, D.J.

The plaintiff, a Ph.D. in Anatomy, has been working as a research scientist in the Department of Rehabilitation Medicine at the defendant University's medical school since 1965. The Department of Rehabilitation Medicine at the NYU Medical School is more commonly referred to as the

Rusk Institute, named after its founder and present chairman, Dr. Howard Rusk.

Originally the plaintiff came to the Rusk Institute with a research team headed by Dr. William Windle, who was doing extensive research in the area of asphyxia damage to various classes of primates. This work was funded by grants received by Dr. Windle from the Federal Government and from various private funds. Apparently, for want of a better job title, the defendant University assigned to plaintiff (and others similarly situated) academic titles. Thus, for the years 1965-1968 plaintiff was styled an "Instructor" and from 1968 to 1972 as an "Assistant Professor".

Since plaintiff was originally engaged as a research scientist working on a special project with special funding, the original letter of appointment from the University to the plaintiff clearly designated that the plaintiff's compensation was "paid from special funds". Each of the following letters of appointment through that of the years 1970-1971 carry the same designation. No such designation is to be found on the plaintiff's letters of appointment for the years 1971-72 and 1972-73.

From 1965 to the Fall of 1970, the plaintiff did only research work. In the Fall of 1970 plaintiff joined a teaching "team" in another department of the medical school

to teach gross anatomy. Apparently the plaintiff was nothing more nor less than a laboratory assistant preparing cadaver cross-sections and dissections for use in the instruction.

During the Spring Term of the same academic year the University brought in certain visiting professors in Gross Anatomy from the New York Medical College-Flower & Fifth Avenue Hospital. Among the visitors was Doctor Emmanuel Alves, who tried to structure a new course in Gross Anatomy built on a small conference system. In this setting, plaintiff again joined the teaching team and apparently assisted in the conference system. At the same time the plaintiff was teaching a course in Medical Spanish although it is totally unclear from the evidence adduced as to what department offered this course.

The reason for the plaintiff leaving her totally research work was that the funding for the Asphyxia Project organized and headed by Dr. Windle was running out. Sometime in 1970 Dr. Windle let it be known both to the University and to his staff (including plaintiff) that he intended to depart in early 1971 and that his grant would terminate in February 1971. Indeed, there was some question raised as to whether Dr. Windle's research project was properly funded within

the limitations of the Federal grants but that is a question which I do not have to resolve. Suffice it to say that members of the Windle research team, including the plaintiff, knew that they had to find other funds to continue their research projects. Most of the staff assembled by Dr. Windle sought employment in other institutions. It seems, however, that the plaintiff had a deep desire to keep together the primate colony with which she was doing her research.

Before continuing with the facts directly concerning the plaintiff, it should be noted that each department of the NYU Medical School has a separate budget, made up of moneys obtained both from the University and from government and private grants. Each department, therefore, rightfully expects its personnel to do research which will produce research grant funds for that department.

Turning again to the plaintiff's work with the defendant University, the Gross Anatomy course in which the plaintiff participated during the Fall of 1970 was conducted solely under the auspices of the Department of Cell Biology. Yet the plaintiff's salary was not included in the budget of that department. In the Spring of 1971, when plaintiff participated in the Gross Anatomy course, part of her compensation (along with that of the visiting professors) was

charged to the Department of Cell Biology. The plaintiff received no additional compensation for the course nor did she receive anything for the "Medical Spanish" course which she taught.

The plaintiff also went to see Dr. Howard Rusk, the chairman of the Rehabilitation Medicine Department, to seek support for her continued research with the primate colony in the Asphyxia Project. At the hearing held on this motion, the plaintiff sought to give the impression that in effect she obtained private funding to continue her research. Dr. Rusk also testified at the hearing, but he maintained that he had personally obtained the funds for which the plaintiff claimed credit. On the record as a whole and from my observation of the witnesses, I must conclude that Dr. Rusk was giving the more accurate picture of what really occurred.\*/

In the summer of 1971, Dr. Rusk wrote letters to eleven employees, including plaintiff, in the Department of Rehabilitation Medicine terminating their current academic

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\*/ In making this finding, I must also note that some other parts of the plaintiff's testimony raise serious questions as to her total credibility. In this preliminary finding, however, I have given plaintiff the most favorable interpretation of the facts which might be permissible even under the most generous rules.

appointments and offering each a new appointment without any possibility of tenure implications. With the exception of the plaintiff, the employees all agreed to accept the new designations. The plaintiff refused to accept the new designation.

For the plaintiff the new designation by the Department of Rehabilitation Medicine would have been Research Associate Professor of Rehabilitation Medicine. This more accurately reflected the plaintiff's work in that department since it is uncontroverted that she did no teaching whatsoever in that department.

In September 1971, the plaintiff went to see her immediate superior in the Department of Rehabilitation Medicine, a Dr. Joseph Goodgold. At this meeting Dr. Goodgold explained to the plaintiff that by accepting the position of Research Associate Professor of Rehabilitation as offered by Dr. Rusk's letter she would maintain her compensation and fringe benefits and that she could continue her work but would not have tenure. Having heard this explanation, the plaintiff suggested as an alternative that she be given an appointment to the Cell Biology Department to teach the Gross Anatomy course and that she could thus continue her research with the primate colony. Dr. Goodgold then drafted

a letter for Dr. Rusk to send to the Department of Cell Biology. This letter recommended the transfer which plaintiff had proposed.

During a conversation at a subsequent time with Dr. Goodgold, the plaintiff claims that Dr. Goodgold showed her a document which allegedly contained his recommendation of her appointment as a tenured Associate Professor in the Department of Cell Biology. Dr. Goodgold testified that he never wrote such a recommendation and it is totally uncontested that he had no right to make such a recommendation. The plaintiff admitted that she never read such a recommendation but yet insists that it did exist. I find that in reality no such recommendation ever existed.

During the academic year 1971 - 1972, the plaintiff made various attempts to obtain a position with the Department of Cell Biology of the University Medical School. The position which plaintiff sought had very definitive parameters: (1) a tenured position; (2) to teach Gross Anatomy; (3) while doing no research for the Department of Cell Biology but continuing her work with the primate colony in the Department of Rehabilitation Medicine; and (4) that she be permitted to use graduate students from the Department of Cell Biology to assist in the research involving the primate colony.

Meanwhile, in February 1972, the Department of Cell Biology hired Dr. Alves as an Adjunct Associate Professor of Cell Biology to teach the Gross Anatomy course. This was the same Dr. Alves who had been a visiting teacher from the New York Medical College-Flower & Fifth Avenue Hospital during the prior semester. Since Dr. Alves' title was "Adjunct", there is no question but that he was not in the tenure chain.

In the Fall of 1972, the defendant University was also negotiating to hire Dr. James Shafland, then at Duke University, to come to the Department of Cell Biology at NYU. In early summer of 1973, Dr. Shafland came to NYU as an "Adjunct" -- again a position with no tenure implications. Shortly after Dr. Shafland's arrival, Dr. Alves decided to return to his native Argentina.

The plaintiff was never considered for Dr. Alves' position, nor for that offered to Dr. Shafland nor, indeed, for the "vacancy" which she now claims exists because of Dr. Alves' resignation. However, during the 1971 - 1972 academic year, the plaintiff was offered and refused to accept the same assignment which she formerly had as an assistant in the Gross Anatomy course.

The plaintiff's full time appointment as Assistant Professor of Experimental Rehabilitation Medicine was renewed

for the 1972 - 1973 academic year. In the Spring of 1973, however, the plaintiff was advised that the defendant University was changing her designation to "part-time" retroactive to September 1, 1972. The University has refused to renew the plaintiff's appointment for the academic year 1973 - 1974 and has advised her that her services will be terminated as of the end of the calendar year 1973.

The defendant has been far from heartless in its termination of Dr. Faro. Various officials of the University have attempted to aid her in a search for a position at another institution but to no avail. The University's Medical School is presently going through a period of difficult financial strain and officials have explained this to plaintiff, pointing out that the circumstances require the termination of her research. The University, however, has offered the plaintiff part-time employment in her old position as an assistant (or perhaps, more correctly, laboratory assistant) in the Gross Anatomy course on a part-time basis.

Rejecting this offer, plaintiff filed employment discrimination charges under Title VII of the 1964 Civil Rights Act (as amended), with both the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission. These charges were filed as a class action on August 24, 1973. One week later, the

plaintiff commenced this action, for a preliminary and permanent injunction, seeking to prevent NYU from dismissing her or in any way altering her pre-September status as a full time Assistant Professor.

At the outset, plaintiff argued that it was totally unnecessary for this Court to even hold an evidentiary hearing in the matter and that the injunction should issue as a matter of course. If the simplistic view of the situation as presented by plaintiff were taken without question, perhaps an injunction could issue. I perceived, however, that there could be sharp issues of fact, particularly as to motive and intent on the part of the defendant, and therefore I ordered an evidentiary hearing. That is the ordinary method of handling preliminary relief, (see SEC v. Frank, 388 F.2d 486 (2d Cir. 1968), and I believe that it should be an invariable procedure in this type of case where factual questions of motive and intent are so deeply ingrained in the relief sought under the statute. Discrimination in and of itself is a concept not easily defined, and it is even more difficult to prove without reference to motive or intent. The mere fact that a litigant is a member of a class protected by the statute and that the litigant did not obtain a particular job is not, to my mind, a sufficient reason to grant extraordinary preliminary relief pending the resolution of the question by some other agency.

Before deciding whether a preliminary injunction should be issued in this case, it is first necessary to decide what test is to be used in making that determination. See Colonial Sand & Stone Co. v. Geoghegan, \_\_\_ F.Supp. \_\_\_ (S.D.N.Y., filed as of Sept. 18, 1973).

There are some cases presented to the Court where the issues are fairly straightforward and can be resolved readily. In such situations, the test is whether the plaintiff has shown "a strong likelihood of ultimate success on the merits plus irreparable damage if the relief sought is not granted." Exxon Corp. v. City of New York, \_\_\_ F.2d \_\_\_ (2d Cir. May 17, 1973) (Slip op. No. 3659).

A second and different test applies, however, where there are presented to the Court "questions going to the merits so serious, substantial and difficult as to make them a fair ground for litigation and thus far more deliberate investigation." Checker Motors Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir.), cert. denied, 394 U.S. 999 (1969). Accord, Gulf & Western Indus., Inc. v. Great Atlantic & Pacific Tea Co., 476 F.2d 687 (2d Cir. 1973). In such a case, this Court must determine whether "the balance of hardship tips decidedly toward the plaintiff . . . ." Hamilton Watch Co. v. Benrus Watch Co., 206 F.2d 738, 740 (2d Cir. 1953). This is so since the District Court is forced by the Federal

Rules of Civil Procedure to act most expeditiously while accomplishing the "basic purpose of a preliminary injunction . . . to maintain the status quo." Danielson v. Local 275, et al., \_\_\_ F.2d \_\_\_ (2d Cir. May 31, 1973)

(Slip.op. No. 3893).

With that in mind, I find that the questions presented in this case are not so "substantial and difficult" as to warrant the application of this second test. It is my judgment, therefore, that the plaintiff must meet the traditional standards set out in the first test, i.e., a strong likelihood of success on the merits and irreparable harm if the relief sought is not granted.

In order to establish a strong possibility of success on the merits of her action, it is clear that plaintiff must meet the criteria for a prima facie case of discrimination as set out by the Supreme Court in McDonnell Douglas Corp. v. Green, \_\_\_ U.S. \_\_\_, 93 S. Ct. 1817 (1973). The plaintiff has set out the applicable criteria as follows:

- (1) that she belongs to a class protected by Title VII;
- (2) that she applied for a job for which she was qualified;
- (3) that she was not considered or was rejected for the job; and

(4) that the employer continued to seek applicants from men of comparable qualifications.

The plaintiff claims that she has met all of these criteria.

But I find that there is a fatal defect in the plaintiff's case. The plaintiff's application for a job in the Department of Cell Biology in the defendant's medical school was so circumscribed by conditions set down by the plaintiff that no such job was available for her or for any other person, male or female. She claims that there was sex discrimination because Dr. Alves and Dr. Shafland were given appointments to teach Gross Anatomy. Both of those positions were non-tenured. It is clear that at least part of the reason for the defendant's insistence on people who were non-tenured, (and not in the "tenure track" to teach this basic course, was the financial condition of the University's Medical School. Yet plaintiff sought only a tenured position.

Plaintiff claims sex discrimination because Dr. Alves and Dr. Shafland received their positions with the Department of Cell Biology in jobs which required that they devote their time, effort and research to that department; yet plaintiff insisted on a position with the Department of Cell Biology where all of her energies, other than

teaching a one-semester course every year, would be devoted to activities outside of that department.

Because of the above findings, I do not believe it seemly or necessary to rule on the plaintiff's qualifications for the position which she sought. Suffice it to say that I am thoroughly unconvinced that the defendant University was motivated by sex bias or discrimination in refusing to create a special position for plaintiff and to give that job to her.

Thus I find that plaintiff's reliance on Gillin v. Federal Paper Board Co., 479 F.2d 97 (2d Cir. 1973) to be totally unfounded. There the Court of Appeals found discrimination against the plaintiff since the employer "refused to consider her at all not solely because of lack of qualification but because she was a woman." 479 F.2d at (emphasis added). Here it is clear that plaintiff was not considered for the job she sought not because of her sex but because there was no such job in existence.

Indeed, the record shows that the defendant University Medical School has apparently promoted Sexual Equal Employment Opportunity. The faculty of the Medical School has over 9% women while the total percentage of females among medical doctors in the nation is 7.1%. The plaintiff would denigrate this by pointing out the concon-

tration of women in the Departments of Pediatrics " (an 'obvious' woman's field) with six women and Pathology (the 'trusts and estates' of medicine) with four" (Plaintiff's Post Hearing Memorandum, p. 19). Plaintiff totally ignores the fact that three of the twenty-one tenured faculty members of the defendant's Department of Rehabilitation Medicine are women. Such statistics are far from conclusive but do bear some weight in the determination of whether there was discrimination. McDonnell Douglas Corp. v. Green, supra, 93 S.Ct. at 1825; cf. also Leisner v. N.Y. Telephone Co., 358 F. Supp. 359 ((S.D.N.Y. 1973).

The plaintiff claims that she is entitled to tenure by reason of the fact that she has been employed by the defendant University for over eight and one-half years. This claim is apparently bottomed on the University's tenure policies and is thus a semi-contractual claim. Plaintiff relies on a by-law in the Faculty Handbook of New York University which provides in part:

"A full-time assistant professor who is not promoted at the expiration of . . . seven years of service in the ranks of instructor and assistant professor, shall be ineligible for further full-time appointment in the University."

Faculty Handbook (1972 ed.), By-Law 72(b), p. 24

It is difficult to see how this by-law materially advances plaintiff's claim but, in any case, I find that it is the

very next by-law, number 73, which is more pertinent.

That by-law explicitly states:

"Nontenure Positions. Instruction or research service shall be without tenure implications of any kind, regardless of rank or title, if rendered . . . in a program having a subsidy of limited duration." (emphasis added).

The non-tenured nature of the positions held by Dr. Faro is further evidenced by the Statement of Policy in Regard to Academic Freedom and Tenure adopted by the University's Board of Trustees:

"All part-time appointees to the University staff, irrespective of title, rank, or cumulative length of service, are entitled to no right of tenure, and their appointments are limited strictly to the periods stipulated in the official notices thereof. . . . The same stipulation applies to personnel appointed with professional or other titles, whether full-or-part-time service, on subsidized assignments such as sponsored research, or in teaching programs where expence of the program is dependent upon a subsidy of limited duration." (emphasis added). Faculty Handbook (1961 ed.) (in effect 1961-1972), p. 22

Therefore, despite the fact that Dr. Faro has assisted in teaching some courses, she has never been in a tenure line because she has basically worked on either a program having a subsidy of limited duration (the Windle project) or under subsidized assignments on sponsored research (the grants obtained by Dr. Rush), neither of which lead to a tenured position.

Plaintiff's reliance on Johnson v. University of Pittsburgh, 359 F. Supp. 1002 (W.D.Pa. 1973) is also misplaced. In Johnson the Court found "statistical evidence of a pattern and practice of discrimination against women in the School of Medicine, University of Pittsburgh." 359 F. Supp. at 1011. The statistical evidence in this case, far from proving a pattern of discrimination, shows that the proportion of tenured female professors of medicine exceeds the national proportion of female doctors.

Johnson is also easily distinguished on other grounds. There, all of the male professors were uniformly given raises of \$2,500 annually while the only female was given an annual raise of \$1,000. 359 F. Supp. at 1002. The average salary for male tenured professors was \$37,500, while the average salary for female tenured professors was more than ten thousand dollars lower. 359 F. Supp. at 1003.

Plaintiff in this case offered no evidence at all to show that women at NYU Medical School were uniformly paid less than men, nor did she show that their average salary was lower. Plaintiff argued that she was offered \$4,000 for a job for which Dr. Alves was paid \$23,000. I find, however, that plaintiff was mistaken, if not misleading, in stating that it was the same job. Dr. Alves was a full time

member of the department by which he was paid. On the other hand, Dr. Faro merely intended to teach one course in that department and to devote all her other time and energy to the primate research project in another, and separately budgeted, department. I find that the \$4,000 offered to Dr. Faro for assisting in the anatomy dissecting room two days a week for one semester was comparable to that offered to males performing the same services and, hence, non-discriminatory.

Finally, the Johnson Court found "intentional wrongdoing" in the way the University of Pittsburgh's Medical School treated female professors. If anything, I am forced to conclude that the defendant University had treated Dr. Faro fairly and in a manner that was above reproach.

For the reasons set forth above, the plaintiff has failed to show either irreparable harm or the likelihood of success on the merits and, therefore, no injunction will issue.

Motion denied. So ordered.

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U. S. D. J.

Dated: New York, New York

November 9, 1973.

[ 18. ]